

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 1251 08.0004.0606

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 2-4-86
DATE FOR REVIEW 2-13
DATE DUE 2-18

Adopted w/a hearing _____
Adopted w/o hearing ✓
Temporary rule _____

Approved 2-14-86 mjc Disapproved _____ Returned to Agency _____

Resubmitted _____ Due _____
Approved _____ Disapproved _____ Returned to Agency _____

Date filed w/Secretary of State 2-18-86 Revisor approved 2.7.86
disapproved _____

✓ Rule as Adopted

✓ Rule as Proposed

✓ Order Adopting 1.30.86 Date

_____ Notice of Intent to Solicit Outside Opinion

✓ Order for rulemaking
N/A date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking contains small biz statement
? Sufficiency Rules were not mailed. Notice contains minimal statement re rule subject matter.

✓ Affidavit of Mailing Notice or rulemaking
12.19.85 At least 30 days prior to ~~hearing~~/adoption

✓ Mailing list Certificate

✓ Publication in State Register
12.23.85. At least 30/~~20~~ days prior to ~~hearing~~/adoption

N/A Hearing Examiner's Report

Chief Hearing Examiner's Report(s)
_____ Approving H.E.'s Report
_____ Approving agency action

✓ Agency's Findings of Fact

N/A LCRAR Report or agency Affidavit

Certificate of Board's Resolution Adopting Rules

Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness contains small biz statement, direct favorable impact.

N/A Petition for Adoption of a Rule

✓ Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials)

✓ Certificate of Compliance w/Rulemaking Procedures

✓ Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General

SF-00006-03

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT ATTORNEY GENERAL

TO: STEVE KEEFE, Commissioner
Department of Labor and Industry

DATE: 2/14/86

ATTN: HAROLD W. SCHULTZ, II
Special Assistant Attorney General

FROM: MARTHA J. CASSERLY MJC
Special Assistant Attorney General

PHONE: 296-4692

SUBJECT: In the Matter of the Proposed Adoption by the Minnesota Department of Labor and Industry, Workers' Compensation Division, of Rules Governing Independent Contractors

The above-referenced rule has been approved as to its legality by the Attorney General on February 14, 1986.

Enclosed is the agency's copy of the approved rule. This office has already filed two copies of the approved rule with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth copy is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submission or comments received by the agency and any extra copies of documents which the agency submitted to the Attorney General.

In order for a permanent rule without a hearing to become effective, your agency must publish a notice of adoption in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

If you have any questions in this regard, please contact me.

MJC:pmf

Enclosures

cc: Maryanne Hruby
Executive Director
Legislative Commission to Review
Administrative Rules

Duane Harves
Chief Administrative Law Judge
Office of Administrative Hearings

RR1251

AG copy -

Department of Labor and Industry

Adopted Rules Relating to Workers' Compensation; Independent Contractor

Rules as Adopted

INDEPENDENT CONTRACTOR

5222.0010 PURPOSE.

The purpose of this chapter is to establish standards for distinguishing between an employee and an independent contractor for purposes of workers' compensation coverage under Minnesota Statutes, section 176.012, paragraph (e). For those occupations specifically discussed in parts 5222.0020 to 5222.0312, this chapter establishes a "safe harbor" for assuring either independent contractor or employee status in those occupations. Where a worker is within the scope of the definition of a part, but does not meet the safe harbor criteria for either independent contractor or employee status, the determination shall be made as described in part 5222.0320.

"Employee" as used in this chapter means a worker who is not an independent contractor. The employee safe harbor criteria are not intended to define "employee" under Minnesota Statutes, section 176.011, subdivision 9 for any purpose other than distinguishing workers who are not independent contractors.

5222.0020 ARTISANS.

Subpart 1. **Definition.** An artisan is a person who has been trained in a mechanical art or trade. The particular skill necessary in the work is acquired by attending a vocational school, serving an apprenticeship, or by working as a handyman or helper and learning the trade informally.

Artisans include bricklayers, blocklayers, cable installers, carpenters, electricians, roofers, siders, painters, plasterers, paperhangers, tapers, joiners, plumbers, and steamfitters.

Subp. 2. **Independent contractor.** An artisan is an

independent contractor and not an employee if all of the following criteria are substantially met.

A. The artisan is responsible for the final result, is free to choose the means and methods for accomplishing the result, and is not required to conform to fixed hours.

B. The artisan is free to select others to assist in performing the job.

C. The artisan has the opportunity of making a profit or suffering a loss and is not guaranteed a minimum income.

D. The artisan has business expenses beyond the furnishing of tools, such as scaffolding, ladders, trucks, equipment, and advertising.

E. The artisan has a substantial investment in facilities or equipment.

F. The artisan holds himself or herself out to the public as being available to perform services for others.

G. Payment for the work is on a job basis for a complete job rather than a time basis.

H. The artisan agrees to provide lien waivers upon completion of the job.

Subp. 3. **Employee.** An artisan is an employee if all of the following criteria are substantially met.

A. The artisan is hired to do the work personally and any helpers are hired, paid, and subject to control by the purchaser of the artisan's services.

B. Work is during fixed hours established by the purchaser and on a full-time basis.

C. The artisan is paid on an hourly, weekly, or similar rate that is independent of the amount of work completed.

D. The artisan has no substantial investment in facilities or equipment for doing the work.

E. Materials and equipment other than hand tools are supplied by the purchaser of the artisan's services.

F. The artisan will not incur a loss or realize a profit by exercising independent judgment in hiring helpers, selecting the materials used, determining methods of work, or

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similar matters.

G. If the artisan does not complete the job, the artisan is not responsible for damages for noncompletion or for obtaining a replacement to complete the job.

Subp. 4. **Cooperatives.** An artisan who is a member of a labor cooperative or similar job-sharing entity is an employee of the cooperative or entity if the artisan's investment in the cooperative is less than 15 percent and advance payments based on hours of work are made by the cooperative prior to completion of the job.

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5222.0030 BARBERS.

Subpart 1. **Definition.** Barbers are persons registered to practice barbering pursuant to Minnesota Statutes, chapter 154. A registered barber's apprentice is not an independent contractor.

Subp. 2. **Independent contractor.** A barber is an independent contractor if all of the following criteria are substantially met.

A. The barber rents a barber chair from the purported employer for a flat sum per week, month, or similar time basis.

B. All payments by customers for services are retained by the barber.

C. The barber furnishes his or her own tools, but need not furnish linens or supplies.

D. The purported employer does not have the right to control the means and manner of the barber's performance of services such as haircuts, shaves, shampoos, scalp treatments, and facial massages.

E. A written agreement between the parties provides that the barber is an independent contractor.

Subp. 3. **Employee.** A barber is an employee if all of the following criteria are substantially met.

A. The barber is paid on a salary basis, though tips may be retained by the barber, or the employer retains a set percentage of the money taken in by the barber's services,

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excluding tips.

B. The employer furnishes equipment and supplies other than razors, combs, scissors, and similar items.

C. The employer furnishes uniforms if uniforms unique to the employer are required.

D. The barber does not advertise.

E. The employer may terminate the barber's employment for noncompliance with rules including hours of work, smoking, or wasting time.

F. A written employment agreement states that the parties are not independent contractors.

G. The employer has the right to control the means and manner by which the barber performs services such as haircuts, shaves, shampoos, scalp treatments, and facial massages.

Subp. 4. **Factors excluded.** The fact that barber associations or unions fix hours of work or other conditions of business operation indicates neither employment nor independent contractor status. Rules prescribed with respect to sanitary conditions by the state or city health departments are not to be considered in determining independent contractor or employment status.

5222.0040 BOOKKEEPERS AND ACCOUNTANTS.

Subpart 1. **Definition.** A bookkeeper is an individual whose work consists substantially of some or all of the following: recording items in proper journals and on special forms, posting ledgers, balancing books, compiling reports, and otherwise keeping a complete and systematic set of records of an organization's business transactions. Accountants licensed under Minnesota Statutes, chapter 326 are bookkeepers for the purposes of this part.

Subp. 2. **Independent contractor.** A bookkeeper is an independent contractor if all of the following criteria are substantially met.

A. The bookkeeper rents an office or maintains one in

the home.

B. The bookkeeper makes his or her services available to the public.

C. The bookkeeper's services are rendered for a number of clients and are compensated for on a fee basis.

D. The bookkeeper pays his or her own business expenses, which include the cost of equipment, materials, and helper's wages.

E. The bookkeeper is hired to accomplish a specific result and is not subject to direction or control over the methods or means of accomplishing it.

F. The bookkeeper's services are not performed on the premises of the purchaser of the services.

Subp. 3. **Employee.** A bookkeeper is an employee if all of the following criteria are substantially met.

A. The bookkeeper performs services at regular intervals for a single business concern for a fixed salary.

B. The bookkeeper works on the employer's premises with the necessary supplies and office help furnished.

C. The bookkeeper does not make his or her services available to the public, and does not maintain an office of his or her own.

D. The bookkeeper works during fixed hours and enjoys the usual privileges extended by an employer to employees including paid vacations, sick benefits, or bonuses.

E. The bookkeeper's services are in connection with a system of bookkeeping or accounting adopted by the employer.

F. The bookkeeper is subject to direction and control of the employer, although he or she may not be closely supervised because of the skill required to do the work.

5222.0050 BULK OIL PLANT OPERATORS.

Subpart 1. **Definition.** A bulk plant operator is an individual who:

A. distributes the products of firms engaged in the oil business;

B. receives the oil products from the firm with which he or she contracts and delivers them to the retailers in his or her territory; and

C. collects money for the products from customers and forwards it to the firm.

Subp. 2. **Independent contractor.** A bulk oil plant operator is an independent contractor if all of the following criteria are substantially met.

A. The operator is in complete charge of the entire plant.

B. The operator's contract with an oil firm provides that the operator will:

(1) sell the firm's petroleum products on a consignment basis and account for all money collected;

(2) sell the products within a general territory at prices set by the firm;

(3) bear all expenses except freight on the products consigned;

(4) furnish trucks and other equipment; and

(5) hire, pay, and assume full responsibility for all necessary assistants.

C. The operator advertises the firms' products at his or her own expense.

D. The operator fixes the hours and days the plant remains open, and hires, pays, and controls the employees.

Subp. 3. **Employee.** A bulk oil plant operator is an employee if all of the following criteria are substantially met.

A. The operator does not have an investment in capital assets and is paid on a salary basis.

B. The operator is required to work fixed hours or full time.

C. The operator is included in the oil firm's employee benefits plans.

D. The operator is required to comply with instructions given by the firm.

E. The operator is not personally obligated to pay

wages or does not assist in paying the truck or plant maintenance expenses.

F. The operator is hired to manage the plant on a salary basis under instructions on the method and manner of doing the work.

5222.0060 COLLECTORS.

Subpart 1. **Definition.** A collector is an individual who collects, accepts, or encourages payments from the customers of a business for merchandise sold or services rendered by that business.

Subp. 2. **Independent contractor.** A collector is an independent contractor when the criteria of item A or B is substantially met.

A. If the collector is a door-to-door or telephone collector, he or she:

(1) is assigned a specific territory and furnished lists of people from whom to collect;

(2) is not required to conform to fixed hours, devote any particular amount of time to the business, or produce a minimum volume of collections;

(3) is required to cover the territory regularly, but works out a schedule of contacts;

(4) reports to the office only to turn in collections and to get new lists;

(5) receives a fixed percentage of the collections made, out of which are paid all expenses connected with the work;

(6) is not guaranteed a minimum income; and

(7) is free to engage in other employment, including collecting accounts for other firms.

B. The collector accepts payment of bills from the customers of a third party on the collector's premises and:

(1) bills can be paid at any and all times the collector's premises is open for business;

(2) the collector is not required to be present

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if someone is on the premises to receive payments;

(3) the collector is not required to conform to fixed hours, or to devote any particular amount of time to the third party's business, or to give preference to the third party's customers;

(4) the collector deposits all money collected in a bank and periodically forwards to the third party copies of bank deposit receipts, and complaint forms from customers;

(5) the third party furnishes the collector with the necessary business forms, postage, and stationery;

(6) the collector is required to purchase a surety bond;

(7) the third party pays a salary for the collection services or the collector may receive a percentage of the money collected;

(8) the collector is not trained in the work or required to follow prescribed routines; and

(9) the collector is free to conduct private business activities in addition to the collection services.

Subp. 3. **Employee.** A collector is an employee if all of the following are substantially met.

A. The services of the collector are retained to further the employer's business.

B. The collector is required to perform services pursuant to schedules established by the employer.

C. The employer has first call on the collector's time and efforts.

D. The collector has no significant business expenses or investment in the business.

E. The collector is paid on a commission or salary basis.

F. The employer has the right to establish the means and methods used in collecting.

G. The employer has the right to interfere with or set the order of the services.

H. The collector must report at the firm's office

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regularly for conferences, training, or instructions.

I. The hiring of helpers or substitutes is not permitted.

J. The grounds for termination are not limited to failure to meet production quotas.

5222.0070 CONSULTANTS.

Subpart 1. **Definition.** A consultant is one who confers with and advises people on matters within the particular field in which he or she specializes. The consultant has developed a peculiar knowledge or special skill of a professional or semiprofessional nature through extensive training and education or through wide experience in a particular occupation.

Subp. 2. **Independent contractor.** A consultant is an independent contractor if all of the following criteria are substantially met.

A. The consultant rents an office or offices at home.

B. The consultant advertises in newspapers or trade journals, or maintains business listings, or otherwise holds himself or herself out to the public as being available for a particular type of service.

C. The consultant is free to hire clerical help and assistants.

D. The consultant's success in the business world is dependent entirely on personal efforts and the demand by the public for the services.

E. The consultant operates under an arrangement where for a set fee technical advice or assistance is given.

F. The consultant's contract of service is for a specified period of time or specific purpose.

G. The consultant is free to work for others at the same time.

H. The consultant is not required to observe regular hours of work either at the firm's offices or at home.

I. The consultant agrees only to be available for conferences and consultations at the request of the firm or, as

in some cases, to perform services on a specified minimum number of days.

J. The consultant makes no regular reports and is not required to attend regular conferences with members of the firm.

K. The consultant is not subject to control or supervision, but is given a free hand in doing work.

L. The consultant is employed to do a specific job and those who employ the consultant are interested only in the result accomplished and not in the manner and means of accomplishing it.

Subp. 3. **Employee.** A consultant is an employee when all the following criteria are substantially met.

A. The consultant is retained for services which further the employer's business.

B. The consultant is required to perform services personally.

C. The consultant's services are not available to the public.

D. The consultant has no investment or business expense.

E. The consultant provides recurring, rather than sporadic or infrequent, services.

F. The employer has the right of first call on the services of the consultant.

G. The consultant is required to report on the progress of assignments.

H. Either party has the right to end the relationship at any time.

I. The consultant receives a fixed salary determined on a weekly, monthly, annual, or similar basis.

J. The consultant cannot realize a profit or loss from the services.

5222.0080 DOMESTIC SERVICE.

Subpart 1. **Definition.** Domestic service means household services such as housecleaning, meal preparation, or invalid

companionship or care.

Subp. 2. **Independent contractor.** A person providing domestic services is an independent contractor if all of the following criteria are substantially met.

A. The service is performed in connection with some episode in the life of the purported employer's family, such as an illness of short duration, preparation for a wedding, the birth of a child, or other episode of limited duration that indicates an engagement to accomplish a specific job.

B. The domestic is free to work for others.

C. The domestic may hire helpers to complete the job.

D. The domestic is paid on a job basis rather than an hourly basis.

Subp. 3. **Employee.** A person providing domestic services is an employee if all of the following factors are substantially met.

A. The parties are not members of the same household or immediate family.

B. The services are performed regularly and over a considerable period of time.

C. The domestic received at least $500 as wages from the employer for any three-month period during the preceding 12 months. This factor is alone sufficient to establish the employment relationship under Minnesota Statutes, section 176.041, subdivision 1.

D. The domestic is not claimed as a dependent for income tax purposes.

E. The domestic is paid on an hourly, weekly, or similar time basis.

F. The domestic does not contribute to the employer's household expenses.

5222.0090 BABYSITTERS.

Subpart 1. **Definition.** Babysitters are individuals who provide childcare services to parents and are not licensed to operate day care centers under Minnesota Statutes, chapter 245.

Subparts 2 and 3 are applicable only if the threshold requirements of Minnesota Statutes, section 176.041, subdivision 1, have been met.

Subp. 2. **Independent contractor.** A babysitter is an independent contractor if all of the following criteria are substantially met.

A. The babysitter takes care of another's child in the babysitter's own home or other premises under the babysitter's control.

B. The instructions given to the babysitter by the parents are general in nature, relating to matters of diet, health, rest, special foods to be given to the child, and who to contact in an emergency.

C. The babysitter is allowed to exercise judgment on matters as to the amount of time and attention the child requires, the types of meals to serve, and the manner of coping with situations which may arise.

D. The babysitter is free to perform household chores when the child does not require personal attention.

Subp. 3. **Employee.** A babysitter is an employee if all of the following criteria are substantially met.

A. The babysitter performs childcare services in the home of the child's parents.

B. The babysitter has been engaged to devote services exclusively to the performance of the employer's work.

C. The babysitter is given instructions regarding such matters as the amount of time and attention the child requires, the types of meals to serve, and the manner of coping with situations that may arise.

Subp. 4. **Babysitter services contracted through agencies.** A babysitter is an employee of an agency in the business of supplying names of babysitters if all of the following criteria are substantially met.

A. The agency maintains a register of names and addresses of individuals whom the agency determines are qualified to perform babysitter services. The agency advertises

and otherwise holds itself out to the public as being engaged in the business of furnishing a babysitter service.

B. The agency fixes the fee to be charged for the services and notifies the babysitter where to report and the hours to be worked.

C. The babysitter pays the agency a specified amount or a percentage of the wages. Appearance and the performance of services must be guided by standards and rules issued by the agency.

D. The babysitter must notify the agency when not available for an assignment and usually agrees to restrict work to that furnished by the agency.

E. Any complaints as to the quality of the services are made by the parents to the agency, and the agency may remove the babysitter's name from its register.

5222.0100 INDUSTRIAL HOMEWORKERS.

Subpart 1. **Definition.** Industrial homeworkers are persons who work in their own homes or workshops on the manufacture or assembly of articles from materials supplied by the purchaser of their services. Services provided by industrial homeworkers include typing of envelopes and the manufacture, alteration, or finishing of gloves, slippers, bedspreads, slipcovers, pottery, boxes, toys, or similar items.

Subp. 2. **Independent contractor.** An industrial homeworker is an independent contractor when all the following criteria are substantially met.

A. The homeworker works under agreements that only require the completion of assignments according to specifications and within designated times.

B. The homeworker is furnished materials by the firm and, in accordance with a pattern or general instructions, turns out a finished product which measures up to the firm's standards.

C. The completed products are paid for on a piecework basis.

D. There is no requirement that the homeworker give

preference to the firm's work, although the homeworker is expected to complete assignments within a specified time.

E. The homeworker may work for others; however, in many cases, the amount of work furnished by one firm keeps the worker busy full time.

F. Unsatisfactory work is done over without pay.

G. Set hours of work are not prescribed by the firm, nor is the work supervised.

Subp. 3. **Employee.** A homeworker is an employee if all of the following criteria are substantially met.

A. The services of the homeworker are closely integrated into the business of the firm that employs the worker.

B. The homeworker is subject to virtually the same set of controls as employees who work on the firm's premises.

C. The homeworker uses his or her own small hand tools, but large tools or heavy equipment is furnished by the firm.

D. The homeworker works or is paid on an hourly basis and renders personal services of a recurring nature.

E. The homeworker is given detailed instructions or training in the work and is required to change the work plans and the order of services when requested.

F. Although there is usually no direct supervision over the services, the firm checks the finished product and has the right to change or direct the method of operation if the completed article is not satisfactory.

G. The homeworker is required to report on progress periodically.

H. The relationship is terminable by either party, with or without cause prior to completion of a project without incurring liability for damages for noncompletion.

I. The employer may change the homeworker's work assignment.

5222.0110 LABORERS.

Subpart 1. **Definition.** Laborers are people whose work

usually requires strength rather than skill, such as laborers, char-women, coal hustlers, gardeners, yard maintenance workers, landscaping and planting workers, tree trimmers, handy men, janitors, odd-job men, porters, window washers, and other unskilled workers.

Subp. 2. **Independent contractor.** The laborer is an independent contractor if all of the following criteria are substantially met.

A. The laborer generally must use business judgment to earn a livelihood. The laborer's success or failure depends on how assistants are managed, the protection of investment through proper care of tools and equipment, and the reputation established as a result of methods of doing business.

B. The services need not be performed personally.

C. The laborer holds himself or herself out to the public as available for furnishing a certain type of service on a job basis.

D. The laborer is free to hire assistants and the assistants are the laborer's own responsibility, that is, the laborer directs them, pays them, and is liable for the payment of taxes on their wages.

E. The laborer furnishes tools.

F. The laborer obtains work by recommendation, advertising in newspapers, or maintaining a business listing in a telephone or service directory.

G. The laborer is responsible only for completion of the job within a certain time and is free to use personal methods and means for doing the work.

H. The laborer agrees to provide lien waivers upon completion of the job.

Subp. 3. **Employee.** A laborer is an employee if all of the following criteria are substantially met.

A. The services must be performed personally.

B. The laborer works on employer premises or at locations assigned by the employer, at specified times, and with tools and facilities furnished by the employer. The services

may be provided on a permanent, recurring, or itinerant basis.

C. Pay is computed on a time rather than a lump-sum basis.

D. The employer has the right to stop the laborer on one job and start on another, to speed up or slow down the worker, and to express dissatisfaction with the work and to have it redone.

E. The laborer is not responsible for damages for noncompletion of the work. If the laborer quits prior to completing the job, the laborer is not responsible for finding a replacement.

5222.0120 MUSICIANS; GENERAL.

The status of musicians or groups in parts 5222.0120 to 5222.0140 is not affected by the fact that an American Federation of Musicians Form B Contract, to which the leader is a party, purports to make the purchaser their employer. The actual relationship, rather than the terms of the contract, controls.

5222.0130 MUSICIANS; COOPERATIVE ORCHESTRAS.

Subpart 1. **Definition.** A cooperative orchestra is a musical group operated on a cooperative or partnership basis. All of the members have a voice in determining the membership, the engagements to be accepted, the division of the money received, and all other phases of the orchestra's operations. By common consent of the members one of the group may be designated as a leader whose duties are to act as spokesperson for the group and to negotiate engagements in the orchestra's name. A business manager or set manager or other nonplaying member may be a member of a cooperative orchestra.

Subp. 2. **Independent contractor.** All the members, including the leader, of an orchestra are independent contractors if all of the following criteria are met.

A. Payment is not on an hourly basis. Proceeds from engagements are used to pay expenses and the remainder is distributed as determined by members.

B. The group is free to work for other purchasers of its services.

C. The purchaser does not have the right to discharge a member of the group, or to dictate the style or manner of playing the music.

D. The group may be liable for damages for nonperformance if it quits prior to completing its engagement with a purchaser.

Subp. 3. **Employee.** Members of a cooperative orchestra are employees if all the following criteria are substantially met.

A. The individuality of the orchestra is subordinated to the enhancement of the purchaser's reputation.

B. The work relationship is not short term but is of a continuing nature.

C. The purchaser has the right to discharge the leader or any of the orchestra members, to change the style or type of music, to have first call on the services, and to restrict the orchestra's outside activities.

D. The purchaser pays the members on an hourly or time basis and bears the expenses of the orchestra.

5222.0140 MUSICIAN; ORCHESTRA LEADER.

Subpart 1. **Definition.** An orchestra leader or union contractor is the assembler or leader of a musical group that plays music in public for compensation.

Subp. 2. **Independent contractor.** An orchestra leader is an independent contractor if all of the following conditions are substantially met.

A. The leader selects the members and rehearses and directs them.

B. The leader holds out to the public as being able to furnish a musical organization and enter into contracts to furnish music.

C. The leader has the primary right to control the orchestra members as to how, when, and where they work.

D. The leader is charged with all expenses the

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orchestra incurs, and, after paying expenses and the salaries or hourly wages of the other members, suffers a loss or realizes a profit from the undertaking.

E. The leader is paid a lump sum for an engagement.

F. The purchaser of the music deals directly with the leader.

G. The purchaser retains only such control over the leader as to ensure the attainment of the desired result, such as the privilege of making suggestions on the type or style of music and number of musicians wanted.

Subp. 3. **Subcontractor.** Where the leader is an independent contractor, the purchaser of music is responsible for the workers' compensation coverage of group members other than the leader under Minnesota Statutes, section 176.205, unless those members are independent contractors with respect to the leader or the purchaser.

Subp. 4. **Employee.** The orchestra leader or assembler and members of the musical group are employees of the purchaser of musical services if all of the following criteria are substantially met.

A. The purchaser hires a musician (usually called a union contractor) to assemble an orchestra to play at the purchaser's establishment. The purchaser specifies the number of musicians, the type of instruments, and the price per musician.

B. The assembler of the group may be the orchestra leader if the purchaser designates him or her as the leader.

C. The purchaser may accept all the musicians who have been assembled or make changes in the personnel with or without an audition.

D. The purchaser pays for the services on an hourly basis and is responsible for the business expenses of the group.

5222.0150 OUTSIDE COMMISSION SALESPEOPLE OR MANUFACTURER'S REPRESENTATIVES; GENERAL.

The following factors, taken together, are not sufficient

to establish an employment relationship for an outside commission salesperson or manufacturer's representative under parts 5222.0160 to 5222.00180 territorial restrictions, fixing of sales prices and terms by the companies, the furnishing of leads, working off premises of the employer, and requirements that the salesmen investigate customers' complaints, collect delinquent accounts, and refrain from selling for competitors.

5222.0160 TRAVELING SALESPEOPLE.

Subpart 1. **Definition.** A traveling salesperson is associated with a manufacturer or distributor whose products the salesperson sells directly to wholesalers or retailers. The salesperson is assigned to territories and furnished with price lists and samples or descriptions of the merchandise to be sold. The salesperson is required to sell the merchandise at prices set by the firm and the firm reserves the right to accept or reject orders. The firm fills the orders by shipping directly to the customers and billing the customers directly. The salesperson receives compensation from the firm in the form of a percentage of the price the customers pay for the merchandise. The salesperson may be required to work full time, to not work for competitors, or to produce a certain amount of business regularly.

Subp. 2. **Independent contractor.** A traveling salesperson is an independent contractor if all the following conditions are substantially met.

A. The salesperson is free to solicit when, where, and how he or she pleases.

B. The salesperson chooses working hours and schedule of calls.

C. The salesperson chooses his or her own means of travel and is responsible for the costs of travel.

D. The salesperson pays his or her own expenses.

Subp. 3. **Employee.** A traveling salesperson is an employee if all the following conditions are substantially met.

A. The salesperson is required to appear at or report

to the firm's offices regularly.

B. The salesperson must work during fixed hours or at certain times.

C. The salesperson must follow and report on leads.

D. The salesperson is required to take part in sales meetings or training courses.

E. The salesperson is required to canvass territory at regular intervals.

F. The firm is dependent principally on the services of traveling salespersons for the disposition of its merchandise.

5222.0170 HOUSE-TO-HOUSE COMMISSION SALESPEOPLE.

Subpart 1. **Definition.** A house-to-house commission salesperson sells door-to-door at retail prices to the customer. The salesperson does not purchase stock at wholesale, maintain that stock for resale, or retain the risk of loss if the stock is not sold.

Subp. 2. **Independent contractor.** A house-to-house commission salesperson is an independent contractor if all of the following criteria are substantially met.

A. If assigned to territories, the salesperson is not granted exclusive rights to them.

B. The salesperson is not required to canvass his or her territories within any specified time or to work during fixed hours or at certain times.

C. The salesperson receives no training, is not required to follow an established routine or schedule, and devises his or her own methods and means of selling.

D. The salesperson pays his or her own business expenses.

E. The salesperson is not required to produce any minimum volume of business or follow leads furnished by the company.

Subp. 3. **Employee.** A house-to-house commission salesperson is an employee if all of the following criteria are substantially met.

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A. The salesperson works for only one company and on a full-time basis.

B. The services of the salesperson are an important part of the company's business.

C. Although the salesperson may not be required to report to the company's office at regular intervals, he or she often receives leads and instructions through the mail which must be followed.

D. The salesperson is required to file regularly a report of activities with the company.

E. The salesperson is required to canvass his or her territory regularly.

F. The salesperson is required to attend sales meetings or take part in training courses.

G. The salesperson may be visited by a sales manager or supervisor who instructs and helps in developing sales techniques and other matters.

H. The salesperson is expected to produce a certain amount of business to continue the relationship.

5222.0180 HOUSE-TO-HOUSE DEALER SALESPEOPLE.

Subpart 1. **Definition.** A house-to-house dealer salesperson buys stocks of commodities at wholesale from a company and sells them at retail. In other respects, the dealer is similar to ordinary retail merchants and house-to-house commission salespeople.

Subp. 2. **Independent contractor.** A dealer is an independent contractor if all of the following criteria are substantially met.

A. The dealer is not required to work during fixed hours or at certain times, to follow any particular routes or schedules or to report on his or her activities.

B. The dealer keeps substantial inventories and has automobiles or trucks to deliver merchandise.

C. The dealer may employ others.

D. Compliance with suggestions or attendance at

salesmanship meetings are optional with the dealers.

E. The dealer is not required to solicit prospective purchasers identified by the company.

F. The dealer chooses working hours and methods of solicitation.

G. The dealer pays business expenses and, by selling on credit, takes a risk of loss.

H. The dealer is dependent for a livelihood on personal efforts and ingenuity in establishing clienteles and good reputations.

Subp. 3. **Employee.** A dealer is an employee if all of the following criteria are substantially met.

A. The dealer must report regularly on sales, prospects, and work activities.

B. The dealer must report regularly for sales meetings and pep talks.

C. Although not usually required to work during hours fixed by the firm, the dealer is expected to meet a certain quota.

D. The dealer is restricted from selling on credit and must abide by prices set by the company.

E. Merchandise may be returned to company with no loss to the dealer.

F. The dealer is furnished leads and required to follow-up and report.

G. The dealer is required to concentrate on certain products listed as "specials" and follow schedules or routes worked out by the company.

H. If sales fall off, a manager or other company representative investigates and instructs the dealer how to increase sales.

I. Helpers may be provided by the company for dealers who maintain large volumes of sales.

J. The relationship is terminable by either party on short notice and without liability to the employee for noncompletion.

K. Where the dealer trains others, the dealer is paid and may be elevated to a managership.

5222.0190 AGENT DRIVERS.

Subpart 1. **Definition.** An agent driver is a salesperson who drives a truck in selling and delivering bread, milk, meat, beverages, laundry, dry-cleaning, or similar services. The driver may sell to consumers at retail prices or at wholesale to retailers.

Subp. 2. **Independent contractor.** An agent driver is an independent contractor if all of the following criteria are substantially met.

A. The driver does not contract with the firm to render personal services but only to buy a certain amount of a firm's products regularly.

B. The driver may hire and pay helpers or use substitutes.

C. Although the driver may work full time, the driver does so by choice; and selects working hours.

D. The driver selects customers, sets prices, and often sells on credit.

E. The driver pays truck maintenance costs and other business expenses.

F. The driver cannot return unsold products to the firm.

G. Either party may terminate the relationship at any time without incurring liability.

Subp. 3. **Employee.** An agent driver is an employee if all the following criteria are substantially met.

A. The driver is assigned a route and required to cover it at regular intervals.

B. Helpers or substitutes are not permitted.

C. Prices are set by the company.

D. The driver cannot handle competing lines.

E. The driver is required to keep reports of sales and other matters.

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F. The driver collects from customers and turns money over to the company.

G. The driver has no authority to determine whether sales may be made on credit.

H. The driver reports to the company office at specified times to load trucks, return unsold goods, and report on activities as requested.

I. The driver is required to follow leads.

J. The driver is expected to solicit new customers and adjust complaints.

K. The driver may quit or a firm may fire the driver on short notice, and neither is liable for damages for noncompletion.

L. The driver receives paid vacation, sick benefits, or other similar benefits offered to nondriver employees of the firm.

5222.0200 PHOTOGRAPHERS' MODELS.

Subpart 1. **Definition.** A photographer's model is a professional who poses for photographs that are used for commercial purposes. The photographs are reproduced and appear in magazines, newspapers, or similar media to aid in advertising commercial products. The model is knowledgeable or trained in such subjects as the art of make-up, fashion, hairstyling, acting, and posture.

Subp. 2. **Independent contractor.** A photographer's model is an independent contractor if all of the following criteria are substantially met.

A. The model engages a booking agent for a certain compensation, (usually) ten percent of the model's fees. The agent makes and arranges appointments for the model.

B. Fees are fixed by the agent, usually on an hourly basis.

C. The model reserves the right to limit the time or period of work and the right to work only during certain hours.

D. The model releases property rights in each

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specific photograph that is to be used commercially.

E. The model supplies his or her own wardrobes appropriate to the roles he or she is engaged to portray.

F. The model is free to pose for anyone who desires his or her services.

G. The model is not engaged on a permanent or periodic basis but solely for specific jobs and the model reserves the right to cancel bookings made by his or her agents.

H. The creation and enactment of the roles assigned them are left to the models' own discretion and initiative.

I. The model is free to use his or her skill and training in other fields of business activity, such as radio, movie shorts, fashion shows, and television shows.

Subp. 3. **Employee.** A photographer's model is an employee if all of the following criteria are substantially met.

A. The model works for only one or two photographers or firms and is paid a salary or guaranteed minimum wage to work during fixed hours on the employer's premises.

B. The model is required to conform to instructions or suggestions on, among others, costume, coiffure, general make-up, posture, or the position and expression to assume in an assigned role.

C. The model is paid a salary for first call on his or her services and on a full-time basis or part-time basis.

D. The work is performed mostly on company premises and is done in accordance with a supervisor's or manager's views on the best method of illustrating the good points of the garments or other products being modeled.

E. Either party may terminate the relationship at any time.

5222.0210 PROFESSIONAL PERSONS.

Subpart 1. **Definition.** A professional is a person in an occupation that requires education equivalent to college graduation or beyond and involves compliance with professional and statutory licensing or registration standards before the

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individual can practice. The professional field includes architects, attorneys, certified public accountants, and engineers.

Subp. 2. **Independent contractor.** A professional is an independent contractor when all of the following criteria are substantially met.

A. The professional sets up his or her own business office.

B. The professional hires and directs assistants or helpers.

C. The professional pays all expenses in connection with the business.

D. The professional offers services to the public.

E. The professional works at hours of his or her own choice.

F. The professional is dependent for a livelihood upon the amount of time, energy, and ingenuity applied to the work.

Subp. 3. **Employee.** A professional is an employee if all of the following criteria are substantially met.

A. The professional subordinates activities to the interests of the employer by working under conditions that make the professional's services an integral part of another's business.

B. The professional works when and where a firm dictates.

C. The professional is furnished an office and office facilities, and business expenses are met by the firm.

D. The professional is paid a fixed salary determined on a weekly, monthly, annual, or similar basis.

E. The professional's services are subject to supervision and review.

F. The professional cannot hire a substitute or helper.

G. The professional may be discharged at will and has the right to terminate the relationship at any time without

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liability.

H. The professional incurs no expenses nor make any investment.

I. The relationship is continuing.

5222.0220 DOCTORS OF MEDICINE; PART-TIME SERVICES FOR INDUSTRIAL FIRMS.

Subpart 1. **Definition.** Doctors are persons whose work requires licensure pursuant to Minnesota Statutes, section 147.02.

Subp. 2. **Independent contractor.** Doctors who, in addition to their private practices, enter into arrangements with industrial firms to examine and treat the firm's employees on a part-time basis, are independent contractors if all of the following criteria are met.

A. The firm is interested in securing a medical service rather than the personal service of the doctor and an employment relationship is not contemplated under the terms of the agreement between the parties. The doctor, in effect, accepts the firm as an additional client in the doctor's private practice.

B. The doctor has the right to leave the firm's premises during working hours if an emergency arises in private practice.

C. The doctor has the right to send a substitute to perform the services.

D. The doctor does not have the right to terminate the relationship on short notice.

E. Direct supervision and control over the services were not contemplated by the parties to the agreement.

Subp. 3. **Employees.** Doctors described in subpart 1 are employees if all of the following criteria are substantially met.

A. The doctor's services are materially integrated into the operating organization of the firm.

B. The doctor performs services of a substantial nature for the firm on a regular and continuing basis.

C. The doctor is subject to supervision and control by the firm to the extent necessary to require compliance with its general policies and procedures.

D. The doctor is accorded the rights and privileges that the firm extends to its employees generally.

Subp. 4. **Definition of factors.** This subpart explains the factors listed in subpart 3.

A. Materially integrated is determined by factors such as:

(1) the payment of a salary or fixed rate of pay as compared to remuneration on a fee basis;

(2) a contract term indicating a mutual intention to create an employer and employee relationship;

(3) the firm engages the services of a substitute in the event of the doctor's absence;

(4) the remuneration is reported as wages for social security purposes; and

(5) the doctor, for income tax purposes, reported the remuneration as wages.

B. Regular and continuing basis means agreement to a schedule of definite and fixed hours of service and the requirement to follow the schedule without substantial deviation.

C. Compliance with policies and procedures exists where the methods, routines, and procedures followed by the doctor are subject to supervision. The supervision may be of varying degree and nature, for example, supervision exercised by a medical director may include somewhat detailed control over the physician's medical routines where the supervision exercised by a hospital administrator may lay less emphasis on this aspect. However, the factor of compliance is met where the physician is required to follow the employer's rules regarding the physician's methods of operation generally, including the obligation to treat assigned patients, the report the physician must submit, the priorities the physician must follow both medically and administratively, and the standards the physician must maintain regarding equipment and cleanliness.

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D. Rights and privileges include vacation and sick leave with pay, holiday pay, severance pay, and pension and insurance plans.

5222.0230 REAL ESTATE AND SECURITIES SALESPEOPLE.

Subpart 1. **Definition.** Real estate salespeople are persons licensed as real estate salespersons under Minnesota Statutes, chapter 82. Securities salespeople are persons licensed as agents under Minnesota Statutes, chapter 80A.

Subp. 2. **Independent contractor, real estate.** A real estate salesperson who is a qualified real estate agent under the Internal Revenue Code of 1954, section 3508(b)(1) is an independent contractor. The Internal Revenue Code of 1954, section 3508(b)(1) is incorporated by reference as the standard to be used under this chapter. A real estate salesperson who is not a qualified real estate agent under that standard is nonetheless an independent contractor if all the following conditions are substantially met.

A. The salesperson is licensed to one broker and the cost of the license is paid by the salesperson.

B. The broker makes available to the salesperson office facilities and property listing, and assists the salesperson by giving advice and by cooperating in his or her endeavors.

C. The broker furnishes the salesperson with necessary business forms, stationery, cards, and instructs him or her in office procedures and business policies either verbally or by means of written instructions, such as sales manuals.

D. The salesperson agrees to work diligently for the broker and to conduct his or her business and regulate his or her habits so as to maintain and increase the good will and reputation of the broker.

E. The salesperson agrees not to sell for other brokers.

F. The salesperson provides his or her own

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transportation and pays all expenses incurred in the solicitation of business.

G. The salesperson generally reports to work daily but works no fixed number of hours.

H. Meetings are held in the broker's office on a regular basis, usually weekly, but attendance at these meetings is voluntary.

I. Sales are closed in the name of the broker.

J. The money is turned over to the broker who pays the salesperson commissions at periodic intervals.

K. The salesperson's success is primarily dependent on his or her own initiative and effort.

Subp. 3. **Independent contractor, securities.** A securities salesperson is an independent contractor if all the following conditions are substantially met.

A. The securities dealer engages the salesperson in the furtherance of the business.

B. The salesperson is licensed to a particular dealer.

C. The dealer furnishes the salesperson with desk space, telephone and telegraph facilities, market quotations, statistical and bookkeeping services, and clerical assistance.

D. The salesperson agrees to work diligently for the dealer and to abide by all laws, rules, and regulations under which the dealer operates the business.

E. The salesperson is not required to work fixed hours.

F. The salesperson concludes sales in the name of the dealer and pays over the money to the dealer.

G. The salesperson is paid on a commission basis at periodic intervals.

H. Under certain circumstances, the salesperson may bear a part of the losses resulting from a transaction.

I. Sales meetings are held regularly, but attendance is voluntary.

J. The salesperson's income is primarily dependent on his or her own initiative and effort.

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Subp. 4. **Employee.** A salesperson is an employee when all of the following criteria are substantially met.

A. the salesperson is paid a salary or guaranteed minimum wage;

B. the employer requires fixed hours of work;

C. the employer requires that nearly all work be done on the broker's or dealer's premises;

D. the employer requires attendance at employer's office at specific times;

E. the broker or dealer has the right to interrupt or set the order of services;

F. the employer provides instruction or training in how the salesperson approaches prospects, closes sales, and works on particular problems; and

G. the employer requires the salesperson to report on activities.

5222.0240 REGISTERED AND PRACTICAL NURSES.

Subpart 1. **Definition.** Registered nurses are persons licensed as such pursuant to Minnesota Statutes. Practical nurses are persons licensed as such pursuant to Minnesota Statutes.

Subp. 2. **Independent contractor.** A nurse is an independent contractor if:

A. The nurse holds himself or herself out to the public as exercising an independent calling requiring specialized skills.

B. The nurse has full discretion in administering his or her professional services. Full discretion is present even though the nurse may be subject to the supervision of the attending physician.

C. The nurse is retained full time by the purchaser and the work relationship between the purchaser and the nurse is expected to terminate when the job is completed.

D. The nurse is not retained full time by a purchaser and the nurse is available to others for private duty nursing.

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Subp. 3. **Employee.** A nurse who works for a hospital, clinic, nursing home, public health agency, or as an office attendant for a private physician is an employee if all the following criteria are substantially met.

A. The nurse works full time on the regular staff of the firm.

B. The nurse works for a salary and follows prescribed routines during fixed hours when he or she is not available for private duty nursing.

C. The nurse's services are integrated into the employer's business.

D. The employer has the right to set the order of and supervise the services.

5222.0250 UNLICENSED "NURSES."

Nurses' aides, domestics, and other unlicensed individuals who continue to classify themselves as practical nurses are, in general, insufficiently trained or equipped to render professional or semi-professional "nursing." Their services are normally those expected of maids, servants, and domestics, for example, bathing the individual, combing the individual's hair, reading, arranging bedding and clothing, preparing or serving meals, and occasionally giving oral medication left in their custody. The status of these persons is determined pursuant to part 5222.0080, domestic service.

5222.0260 TAXICAB DRIVERS.

Subpart 1. **Definition.** Taxicab drivers are persons who offer fee for service auto transportation within a limited area.

Subp. 2. **Independent contractor.** A driver is an independent contractor if all of the following criteria are substantially met.

A. The driver owns and drives his or her own cab, or leases it on a flat rate basis and pays a specified rental on a daily, weekly, or similar time basis.

B. The driver is free to work the shift he or she chooses, and there is no control over when and where the driver

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works.

C. The driver's sole compensation is the fares and tips collected from patrons.

D. The driver is required to comply with government rules and regulations and with firm regulations that are meant to ensure proper care and handling of the cab.

E. The driver is not required to report his or her whereabouts and is not subject to instructions on where to seek patrons.

F. If the driver leases the cab, the lessor is interested only in receiving the cab rental and, in many cases, payment for gasoline and oil that the driver is required to buy from the lessor.

G. The opportunity for profit or risk of loss rests with the driver, not the lessor.

Subp. 3. **Employee.** A taxicab driver is an employee if all the following criteria are substantially met.

A. The employer exercises control over the driver while the driver is in possession of the cab.

B. The driver must work during specified hours or on assigned shifts, pick up passengers on call, and report his or her whereabouts periodically.

C. The driver must account for fares collected.

D. The employer requires that the driver perform the services personally.

E. The employer gives instructions on matters of appearance, behavior, manner of seeking patrons, routes, order of services, and time off from duty.

F. Payment is in the form of a salary or salary plus a percentage of fares.

G. The driver is required to report personally and regularly or furnish written reports.

H. There are no business expenses on the part of the driver.

I. Both parties have the right to terminate the relationship at any time.

J. There is no investment or opportunity for profit or risk of loss on the part of the driver.

5222.0270 TIMBER FELLERS, BUCKERS, SKIDDERS, AND PROCESSORS.

Subpart 1. **Definition.** Timber fellers employ chainsaws or other mechanical devices mounted on logging vehicles to fell trees. Trees so felled may either be delimbed at the site or subsequently at roadside landings.

Buckers cut trees into merchantable lengths, with either chainsaw or heavier machinery such as slashers, harvesters, and processors. These operations may also be conducted either at the felling site or at roadside. In either case the product is piled or otherwise accumulated to facilitate subsequent transportation.

Skidders or forwarders either drag logs or trees to roadside landings, or load and transport logs or shortwood (fuelwood or pulpwood) to similar destinations.

Timber harvesters and processors combine two or more of the operations described above.

Mechanical debarking and/or chipping may also be coordinated with skidding or forwarding operations.

Chips are usually blown into semi-trailer vans for delivery to mills for remanufacture or to furnaces for fuel.

Subp. 2. **Neutral factors.** Due to the nature of the work and certain customs in the field, the following factors are neutral: lack of fixed hours of work, payment on a piecework basis, ownership of small tools, and requirements that the product of the work be within overall specifications.

Subp. 3. **Independent contractor.** A feller, bucker, skidder, or processor is an independent contractor if all of the following criteria are substantially met.

A. The worker is granted timber rights to tracts of land and legally binds himself or herself to remove all or certain parts of the timber within specified times at set prices.

B. The worker bargains for "package" jobs which he or she will do by methods of his or her own choice subject to

production specifications required by the contracting company.

C. The worker is paid to obtain a result, which does not necessarily depend on his or her own personal services.

D. The worker is free to hire and direct others to do the work and the worker is responsible for expenses incurred in fulfilling the contract.

E. The worker supplies the necessary equipment and sometimes the tools used by the helpers.

F. The worker determines the working hours and rates of pay, and otherwise controls the helpers' working conditions.

G. The worker holds himself or herself out to the public as a contractor and sometimes holds several logging contracts at the same time.

H. The worker is in a position to make a profit or suffer a loss, depending on the management of helpers, the care of the tools and equipment, and the methods used for doing the work.

I. As long as the worker produces final results that measure up to specifications, there is no desire or legal right to interfere with the worker's methods.

Subp. 4. **Employee.** A feller, bucker, skidder, or processor is an employee if all of the following criteria are substantially met.

A. The feller, bucker, skidder, or processor is assigned specific portions of the area to be harvested, but the right to work in other portions is not given to him or her exclusively.

B. The company assigns a number of workers to each area. They are told the kind and size of trees to cut. Trees designated to be cut because of a conservation or sustained-yield program do not indicate employment.

C. The company foreman periodically inspects the work area to be harvested and, if not satisfied with the progress being made, replaces the workers with another crew.

D. The crews may be shifted from one work area to another to speed up operations and if a worker is ill or not

doing satisfactory work the foreman may replace the worker.

E. The worker chooses his or her own hours of work, but is required to finish each work area within a certain time and to do so usually requires long and regular hours of work.

F. The worker may be paid on a piecework basis or by the cord, but generally the company will not pay for products that do not measure up to specifications. Keeping records of wages paid and hours worked is not indicative of employment if it is required only to ensure that the products may be shipped in interstate commerce.

5222.0280 SAWMILL OPERATORS.

Subpart 1. **Definition.** Sawmill operators manage sawmills. A sawmill is used to convert logs into lumber or other forest products. The mills may be stationary or portable. Moving the logs into position, the sawing operation itself, and the stacking or removal of the products often require the services of a crew of workers.

Subp. 2. **Independent contractor.** A sawmill operator is an independent contractor if all of the following criteria are substantially met.

A. The operator has a substantial investment because he or she owns all or part of the mill and equipment used to move logs, lumber, or other forest products.

B. The operator contracts to saw, or harvest and saw, timber at so much per thousand board feet. The operator may bind himself or herself by contract to complete the job within a set time or to produce a daily or weekly quota.

C. The work calls for independent thought and action based on business judgment, experience, and training.

D. The operator contracts to do a specific job, using his or her own methods. The only control over the work concerns attainment of an acceptable result.

E. The operator hires, pays, and directs his or her own crews.

F. The operator is not required to do the work

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personally, but is responsible for its being done.

G. The operator is in a position to lose or profit from management of the workers and care of the equipment.

H. The operator is free to work for others.

I. There is no restriction of activities so long as the sawmill turns out products that meet the overall specifications in the contract.

Subp. 3. **Employee.** A sawmill operator is an employee if all of the following criteria are substantially met.

A. The purchaser of the services pays the cost of running the mill, even though the operator may own the mill.

B. The operator may pick a crew to operate the mill, but the company pays them and can fire them for poor work.

C. The company has the right to tell the operator what hours to work and require the operator to keep records of the amount produced and on hand daily.

D. The mill is moved from one tract to another as the company requires.

E. The operator may be paid a salary or pay may be computed on a piecework basis.

F. The services are terminable by either party at any time.

G. The operator has no business expenses nor opportunity for profit or risk of loss.

H. The operator cannot work for others.

5222.0290 TRUCK OWNER-DRIVERS.

Subpart 1. **Definition.** A truck owner-driver is any individual, partnership, or corporation (hereinafter referred to as "individual") who owns or holds a vehicle as defined in subpart 2 under a bona fide lease and who leases that vehicle together with driver services to an entity which holds itself out to and does transport freight as a for-hire or private motor carrier.

Subp. 2. **Independent contractor.** In the trucking industry, an owner-operator of a vehicle that is licensed and

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registered as a truck, tractor, or truck-tractor by a governmental motor vehicle regulatory agency is an independent contractor, not an employee, while performing services in the operation of his or her truck, if each of the following factors are substantially present.

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

B. The individual is responsible for the maintenance of the equipment.

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

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

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

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

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

Subp. 3. **Employee.** An owner operator of a vehicle as defined in subpart 2 is an employee, not an independent contractor, while performing services in the operation of the individual's truck, if all of the following criteria are substantially met.

A. The individual is paid compensation for his or her personal services:

(1) based solely on wage by the hour or a similar time unit that is not related to a specific job or freight movement;

(2) on a premium basis for services performed in

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excess of a specified amount of time; and

(3) from which FICA and income tax is withheld.

B. The individual is treated as an employee by the firm with respect to fringe benefits offered to employees by the firm.

C. The individual usually works defined hours.

D. The employer requires that the individual must perform the work personally and cannot change drivers.

E. The individual has no choice in the acceptance or rejection of a load.

F. The individual and firm have no written contract; or, if there is a written contract, it does not specify the individual's relationship with the firm as being that of independent contractor.

5222.0291 WASTE MATERIALS HAULERS.

Part 5222.0290 applies to truck owner-drivers who meet the definition of part 5222.0290, subpart 1 except that they transport waste materials instead of freight.

5222.0292 MESSENGERS/COURIERS.

Subpart 1. **Definition.** Messenger/couriers are vehicle drivers who ~~deliver cargo~~ transport property for a company ~~licensed as a local cartage carrier or courier service carrier~~ operating under a permit or certificate pursuant to Minnesota Statutes, chapter 221 in local or intrastate commerce or operating as an exempt carrier pursuant to the Interstate Commerce Act.

Subp. 2. **Independent contractor.** A messenger/courier is an independent contractor if all of the following criteria are substantially met.

A. The messenger/courier owns ~~and drives his or her own vehicle~~ or holds a vehicle under a bona fide lease or leases a vehicle and provides driver services in local or intrastate transportation and in interstate commerce the messenger/courier provides the means for the transportation of the property.

B. The messenger/courier is free to accept or reject

FF2b

jobs from a carrier and there is no control over when the individual works.

C. ~~The messenger/courier is compensated per delivery~~ The messenger/courier's compensation is based on factors related to the work performed including (1) a percentage of any schedule of rates, or (2) a percentage of a lawfully published tariff or (3) is compensated per delivery. FF2b

D. All expenses are paid by the messenger/courier and the opportunity for profit or loss rests with him or her.

E. The messenger/courier is responsible for the operating costs, including fuel, repairs, supplies, and vehicle insurance.

F. The messenger/courier determines the details and means of performing the services, such as the selection of routes and the order of deliveries.

G. The messenger/courier is responsible for the completion of a specific job and is liable for failure to complete the job.

H. The messenger/courier enters into a contract that specifies the relationship to be that of an independent contractor and not that of an employee.

Subp. 3. **~~E~~mployee.** A messenger/courier is an employee if all of the following criteria are substantially met.

A. The messenger/courier must work during specified hours or an assigned shift.

B. Payment is ~~on a salary or hourly basis rather than per delivery basis~~ based solely by the hour or a similar time unit that is not related to a specific job. FF2b

C. ~~The employing carrier reimburses the messenger/courier for all expenses~~ The company utilizing the service of the messenger/courier reimburses all expenses to the messenger/courier including those contained in the company's schedule of rates or lawfully published tariffs.

D. ~~The employing carrier furnishes the delivery vehicle~~ The company utilizing the services of the messenger/courier is responsible for providing the vehicle and

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all of its expenses.

E. There is no investment or opportunity for profit or risk of loss on the part of the messenger/courier.

F. ~~The employing carrier furnishes insurance for the vehicle used by the messenger/courier~~ The company utilizing the services of the messenger/courier is responsible for all operating expenses, including fuel, repairs, supplies, and vehicle insurance.

FF 2b

5222.0300 VARIETY ENTERTAINERS.

Subpart 1. **Definition.** A variety entertainer is a person who entertains and amuses audiences by means of acts or skits, dances, readings, feats of skill, songs, or comedy acts. The entertainer performs in the legitimate and burlesque theaters, movie houses, circuses, fairs, hotels, and night clubs.

Variety entertainers specialize in one or two types of acts. The more talented create and develop their own acts or routines and sometimes train others to help perform them. They often work in pairs or as members of troupes.

Subp. 2. **Neutral factors.** The status of a variety entertainer is not determined by the entertainer's entering into the form B contract of the American Federation of Musicians. This contract purports to establish an employer and employee relationship between the purchaser of the services and the entertainer. The actual relationship, rather than the terms of the contract, governs.

Subp. 3. **Independent contractor.** A variety entertainer is an independent contractor if all of the following criteria are substantially met.

A. The entertainer performs acts or routines as a series of short-term engagements for a number of different operators of theaters, night clubs, restaurants, and similar establishments.

B. The entertainer's contract, which is usually obtained through booking agents or personal representatives, specifies only the time, place, and duration of each engagement,

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and the pay.

C. The entertainer furnishes his or her own music arrangements, stage props, and dress.

D. The entertainer's act is not an integral part of another's business.

E. The entertainer maintains a high degree of individuality and establishes a reputation based on the acceptance by the audiences for which the entertainer performs.

Subp. 4. **Employee.** A variety entertainer is an employee when all of the following criteria are substantially met.

A. The entertainer is subject to supervision over the number, time, place, and length of rehearsals and performances, and as to duty and behavior, and is bound by rules and regulations to the purchaser of the services.

B. The entertainer's variety acts may undergo considerable change in order to suit the employer's purpose. It may be shortened, lengthened, or moved from one spot to another to weld it, with others, into one complete show or to coordinate it with other activities. In that case, individuality of the performer is subordinated to the purpose of enhancing the reputation of the purchaser of the services.

C. The entertainer's performance becomes an integral part of another's business.

D. The entertainer is engaged on a long-term basis.

E. The entertainer may not work for others.

F. The entertainer has no opportunity for profit or risk of loss, must frequently work with others, and can be shifted from one place to another.

G. The entertainer can be discharged at any time.

H. The entertainer cannot hire helpers or substitutes.

5222.0310 SPORTS OFFICIALS.

Subpart 1. **Definition.** A sports official is an individual engaged to referee games of sport such as basketball, hockey, or football where the level of competition requires the sports official to be a member of or certified by an organization whose

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purpose is to maintain minimum standards and qualifications of sports officials.

Subp. 2. **Independent contractor.** A sports official is an independent contractor if all the following conditions are substantially met.

A. There is a written contract between the sports official and the party or association engaging the services of the sports official that states specifically that the sports official is an independent contractor.

B. Payment to the sports official is for a set fee for each game officiated.

C. The official is free under the terms of the contract to accept or reject assignments of any game.

D. The sports official is not limited to exclusively officiating with the party engaging the services as a sports official.

Subp. 3. **Employee.** A sports official is an employee if all of the following criteria are substantially met.

A. The official is paid on an hourly, weekly, or similar time basis.

B. The official must work at the times and places designated by the purchaser of the official's services, and is not free to reject assignments.

C. The official is not free to sell his or her services to other parties while working for the purchaser.

D. The relationship is terminable at will without any liability to the official.

5222.0311 JOCKEYS.

Subpart 1. **Definition.** A jockey is a person who is licensed under Minnesota Statutes, chapter 240 to ride race horses for compensation as a jockey or apprentice jockey.

Subp. 2. **Independent contractor.** A jockey is an independent contractor with respect to the racetrack, trainer, and horse owner if all of the following criteria are substantially met.

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A. Arrangements for rides are made by the jockey or by an agent of the jockey who receives a commission from the jockey.

B. The jockey is free to ride the horses of any stable.

C. The jockey is free to accept or reject a call.

D. The jockey provides his or her own saddle.

E. The trainer instructs the jockey regarding the nature of the mount, the setup of the race, and the trainer's expectations of the running of the race. The jockey is free to disregard the instructions of the trainer, and may decide the route to be taken, the rate of speed of the horse, and similar matters regarding the running of the race.

F. Payment is a fee paid on a per-race basis from the horseperson's account of the racetrack.

Subp. 3. **Employee.** A jockey is an employee of the trainer if all of the following criteria are substantially met.

A. The jockey rides only for the employing trainer or the jockey rides for other trainers only with the permission of the employing trainer.

B. The jockey is not free to reject the employing trainer's call.

C. The trainer provides or pays for the jockey's saddle.

D. The jockey is not free to disregard the instructions of the trainer regarding the running of the race except for safety reasons.

E. The jockey is paid a salary or wage by the trainer on a time rather than per-race basis; compensation usually includes room and board, and the wage may be paid from the horseperson's account at the racetrack.

5222.0312 TRAINERS.

Subpart 1. **Definition.** A trainer is a person who is licensed as a trainer under Minnesota Statutes, chapter 240.

Subp. 2. **Independent contractor.** A trainer is an

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independent contractor with respect to the racetrack and to the owners if all of the following criteria are substantially met.

A. The trainer sets a fee which covers the daily fee, and bills the owner for the day pay and any additional supplies or services incurred in the care of the horse.

B. Tack, feed, board, and all supplies necessary for the ordinary care of the horse are provided by the trainer.

C. The trainer has a substantial capital investment in tack, equipment, and supplies.

D. The trainer makes all decisions regarding management of the horse while the horse is at the trainer's stable. If the trainer disagrees with instructions of the owner, the trainer is free to tell the owner to remove the horse from the trainer's care, and the owner must comply.

E. The trainer is free to stable and train the horses of other owners.

Subp. 3. **Employee.** A trainer is an employee of an owner if all the following criteria are substantially met.

A. The trainer is paid on a salary, wage, or similar time basis.

B. Tack, feed, board, equipment, and supplies for the care of the horse are provided by the owner.

C. The stables are owned or operated by the owner of the horses.

D. The trainer must comply with instructions of the owner regarding management of the horse, although the owner generally relies on the expertise of the trainer.

E. The trainer may stable and train the horses of others only with the permission of the employing owner.

F. The trainer's hours of work are set by the owner of the horse.

5222.0320 GENERAL CRITERIA FOR NONSPECIFIED OCCUPATIONS.

Parts 5222.0330 and 5222.0340 shall be used to determine if an individual is an independent contractor or an employee where the occupation is not defined in parts 5222.0020 to 5222.0312.

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Additionally, these parts provide interpretative guidance where the occupation is defined but the safe harbor criteria for that occupation are not all substantially met. Where some but not all of the safe harbor criteria are substantially met, those criteria which are substantially met shall be considered evidence of that status, and shall control where a conflicting result for that criterion is indicated by parts 5222.0330 to 5222.0340. ~~Nothing contained in this chapter is intended to prevent or prohibit an insurer from seeking a reimbursement agreement from an insured where an insured disputes the insurer's underwriting or audit judgment on the application of this chapter for purposes of determining premium.~~ FF 2c

5222.0330 CONTROL OF METHOD AND MANNER OF PERFORMANCE.

Subpart 1. **Generally.** The most important factor in determining whether a person is an independent contractor is the degree of control which the purported employer exerts over the manner and method of performing the work contracted. The more control there is the more likely the person is an employee and not an independent contractor. Subparts 2 to 14 describe criteria for determining if there is control over the method of performing or executing services. The total circumstances, including the practices and the customs of the industry, must be considered to determine if control is present.

Subp. 2. **Authority over individual's assistants.** Control over the individual is indicated when the employing unit hires and pays the individual's assistants and supervises the details of the assistants' work.

Subp. 3. **Compliance with instructions.** Control is indicated when an individual is required to comply with detailed instructions about when, where, and how he or she is to work including the order or sequence in which the service is to be performed. Mere suggestions as to detail, or necessary and usual cooperation where the work furnished is part of a larger undertaking, does not normally evince control. Some individuals may work without receiving instructions because they are highly

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proficient in their line of work; nevertheless, the control is present if the employing unit has the right to instruct or direct the methods for doing the work and the results achieved. Instructions may be oral or may be in the form of manuals or written procedures which show how the desired result is to be accomplished. However, instructions required by state or federal law or regulation or general instructions passed on by the employing unit from a client or customer, do not evince control.

Subp. 4. **Oral or written reports.** Control is indicated if regular oral or written reports relating to the method in which the services are performed must be submitted to the employing unit. Periodic reports relating to the accomplishment of a specific result may not be indicative of control if, for example, the reports are used to establish entitlement to partial payment based upon percentage of completion of a job, or the reports are needed to determine compliance with the terms of a contract. Completion of receipts, invoices, and other forms customarily used in the particular type of business activity or required by law does not constitute written reports.

Subp. 5. **Place of work.** Control is indicated if work which could be done elsewhere is done on the employing units premises, especially when the work could be done elsewhere. ? redundant When work is done off the premises, freedom from control is indicated except in occupations where the services are necessarily performed away from the premises of the employing unit.

Subp. 6. **Personal performance.** Control is indicated if the services must be personally rendered to the employing unit. Personal performance of a very specialized work, when the worker is hired on the basis of professional reputation, as in the case of a consultant known in the academic and professional circles to be an authority in the field, is a less reliable indicator of control. Lack of control is indicated when an individual has the right to hire a substitute without the employing unit's knowledge or consent.

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Subp. 7. **Existence of continuing relationship.** The existence of a continuing relationship between an individual and the person for whom he or she performs services indicates the existence of an employment relationship. Continuing services may include work performed at frequently recurring, though somewhat irregular intervals, either on call of the employing unit or whenever work is available.

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

Subp. 9. **Training.** Training of an individual by an experienced employee, by required attendance at meetings, and by other methods, indicates control, especially if the training is given periodically or at frequent intervals.

Subp. 10. **Amount of time.** Control is indicated where the worker must devote full time to the activity. Full time does not necessarily mean an eight-hour day or a five- or six-day week. Its meaning may vary with the intent of the parties, the nature of the occupation, and customs in the locality. Full-time services may be required even though not specified in writing or orally. For example, a person may be required to produce a minimum volume of business which compels the person to devote all working time to that business, or the person may not be permitted to work for anyone else.

Subp. 11. **Simultaneous contracts.** If an individual works for a number of persons or firms at the same time, lack of control is indicated.

Subp. 12. **Tools and materials.** The furnishing of tools, materials, and supplies by the employing unit indicates control over the worker. When the worker furnishes these items, lack of control is indicated. Lack of control is not indicated if the individual provides tools or supplies customarily furnished by workers in the trade.

Subp. 13. **Expense reimbursement.** Payment by the employing

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unit of either the worker's approved business or traveling expenses, or both, indicates control over the worker. A lack of control is indicated when the worker is paid on a job basis and is responsible for all incidental expenses.

Subp. 14. **Satisfying requirements of regulatory and licensing agencies.** Control is not indicated where an employing unit is required to enforce standards or restrictions imposed by regulatory or licensing agencies.

5222.0340 INDEPENDENT CONTRACTOR OR EMPLOYEE, FACTORS TO CONSIDER.

Subpart 1. **Factors.** Among the factors to be considered, in addition to factors of control, when determining if services are those of an independent contractor or employee are those listed in subparts 2 to 9.

Subp. 2. **Right to discharge.** The right to discharge exists if the individual may be terminated with little notice, without cause, or for failure to follow specified rules or methods. There is no right to discharge if an independent worker produces an end result which measures up to contract specifications. Contracts which provide for termination upon notice or for specified acts of nonperformance or default are not solely determinative of the right to discharge. Restrictions on the right to discharge because of a contract with a labor union or with other entities are not relevant for purposes of this subpart.

Subp. 3. **Availability to public.** If an individual makes services available to the general public on a continuing basis, independent contractor status is indicated. An individual's services are offered to the public by, among other things:

A. having an office and assistants;

B. displaying a sign in front of a place of business;

C. holding a business license;

D. having a listing in a business directory or a business listing in a telephone directory; or

E. advertising in a newspaper, trade journal, or

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magazine.

Subp. 4. **Compensation on job basis.** Independent contractor status is indicated by payment on a job basis rather than payment by the hour, week, or month. Payment on a job basis is customary where the worker is independent. Payment by the job may include a predetermined lump sum which is computed by the number of hours required to do the job at a fixed rate per hour or periodic partial payments based upon a percent of the total job price or the amount of the total job completed. The granting of a drawing account at stated intervals with no requirement for repayment of the excess drawn over commissions earned or the guarantee of a minimum salary indicates an employment relationship.

Subp. 5. **Realization of profit or loss.** Independent contractor status is indicated where an individual is in a position to realize a profit or suffer a loss as a result of his or her services. Opportunity for higher earnings from piecework or commissions does not indicate an opportunity for profit or loss. An opportunity for profit or loss is indicated by the following factors, among others:

A. hire, direct, and pay assistants;

B. provide own office, equipment, materials, or other facilities for doing the work;

C. continuing and recurring financial liabilities or obligations, relating to the work;

D. profit or loss in the work depends upon the relationship of receipts to expenditures;

E. expenses incurred in connection with the work are paid by the individual;

F. specific jobs are performed for prices agreed upon in advance; and

G. performance of the services affects the individual's business reputation, and not the business reputation of those who purchase the services.

Subp. 6. **Termination.** The worker's right to terminate the working relationship with the purported employer at will and

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without incurring liability for noncompletion indicates employment. A requirement to provide notice of termination for some period in advance of the termination is not relevant for purposes of this subpart. Independent contractor status is indicated where the individual agrees to complete a specific job, is responsible for its satisfactory completion, and is liable for failure to complete the job.

Subp. 7. **Substantial investment.** A substantial investment by a person in facilities used in performing services for another indicates an independent contractor status. The furnishing of all necessary facilities by the employing unit indicates the absence of an independent contractor status. Facilities include equipment or premises necessary for the work, but not tools, instruments, clothing, and similar items that are provided by individuals working in employment as a common practice in their particular trade. Substantial investment means a monetary investment representing something of considerable worth, in relation to the overall requirements of the person's chosen profession, trade, occupation, or vocation. A substantial expenditure of time or money for an individual's education is not indicative of an independent contractor status.

Subp. 8. **Responsibility.** If an employing unit is responsible for the negligence, personal behavior, and work actions of an individual in contacts with customers and the general public during times that services are performed for the employing unit, an employment relationship is indicated.

Subp. 9. **Services fundamental to business.** Employment is indicated where the services provided are necessary to the fundamental business purpose for which the organization exists.

STATE OF MINNESOTA
DEPARTMENT OF STATE
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Proposed Rules Relating to Workers' Compensation; Independent Contractor

Rules as Proposed (all new material)

INDEPENDENT CONTRACTOR

5222.0010 PURPOSE.

The purpose of this chapter is to establish standards for distinguishing between an employee and an independent contractor for purposes of workers' compensation coverage under Minnesota Statutes, section 176.012, paragraph (e). For those occupations specifically discussed in parts 5222.0020 to 5222.0312, this chapter establishes a "safe harbor" for assuring either independent contractor or employee status in those occupations. Where a worker is within the scope of the definition of a part, but does not meet the safe harbor criteria for either independent contractor or employee status, the determination shall be made as described in part 5222.0320.

"Employee" as used in this chapter means a worker who is not an independent contractor. The employee safe harbor criteria are not intended to define "employee" under Minnesota Statutes, section 176.011, subdivision 9 for any purpose other than distinguishing workers who are not independent contractors.

5222.0020 ARTISANS.

Subpart 1. **Definition.** An artisan is a person who has been trained in a mechanical art or trade. The particular skill necessary in the work is acquired by attending a vocational school, serving an apprenticeship, or by working as a handyman or helper and learning the trade informally.

Artisans include bricklayers, blocklayers, cable installers, carpenters, electricians, roofers, siders, painters, plasterers, paperhangers, tapers, joiners, plumbers, and steamfitters.

Subp. 2. **Independent contractor.** An artisan is an

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independent contractor and not an employee if all of the following criteria are substantially met.

A. The artisan is responsible for the final result, is free to choose the means and methods for accomplishing the result, and is not required to conform to fixed hours.

B. The artisan is free to select others to assist in performing the job.

C. The artisan has the opportunity of making a profit or suffering a loss and is not guaranteed a minimum income.

D. The artisan has business expenses beyond the furnishing of tools, such as scaffolding, ladders, trucks, equipment, and advertising.

E. The artisan has a substantial investment in facilities or equipment.

F. The artisan holds himself or herself out to the public as being available to perform services for others.

G. Payment for the work is on a job basis for a complete job rather than a time basis.

H. The artisan agrees to provide lien waivers upon completion of the job.

Subp. 3. **Employee.** An artisan is an employee if all of the following criteria are substantially met.

A. The artisan is hired to do the work personally and any helpers are hired, paid, and subject to control by the purchaser of the artisan's services.

B. Work is during fixed hours established by the purchaser and on a full-time basis.

C. The artisan is paid on an hourly, weekly, or similar rate that is independent of the amount of work completed.

D. The artisan has no substantial investment in facilities or equipment for doing the work.

E. Materials and equipment other than hand tools are supplied by the purchaser of the artisan's services.

F. The artisan will not incur a loss or realize a profit by exercising independent judgment in hiring helpers, selecting the materials used, determining methods of work, or

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similar matters.

G. If the artisan does not complete the job, the artisan is not responsible for damages for noncompletion or for obtaining a replacement to complete the job.

5222.0030 BARBERS.

Subpart 1. **Definition.** Barbers are persons registered to practice barbering pursuant to Minnesota Statutes, chapter 154. A registered barber's apprentice is not an independent contractor.

Subp. 2. **Independent contractor.** A barber is an independent contractor if all of the following criteria are substantially met.

A. The barber rents a barber chair from the purported employer for a flat sum per week, month, or similar time basis.

B. All payments by customers for services are retained by the barber.

C. The barber furnishes his or her own tools, but need not furnish linens or supplies.

D. The purported employer does not have the right to control the means and manner of the barber's performance of services such as haircuts, shaves, shampoos, scalp treatments, and facial massages.

E. A written agreement between the parties provides that the barber is an independent contractor.

Subp. 3. **Employee.** A barber is an employee if all of the following criteria are substantially met.

A. The barber is paid on a salary basis, though tips may be retained by the barber, or the employer retains a set percentage of the money taken in by the barber's services, excluding tips.

B. The employer furnishes equipment and supplies other than razors, combs, scissors, and similar items.

C. The employer furnishes uniforms if uniforms unique to the employer are required.

D. The barber does not advertise.

E. The employer may terminate the barber's employment

for noncompliance with rules including hours of work, smoking, or wasting time.

F. A written employment agreement states that the parties are not independent contractors.

G. The employer has the right to control the means and manner by which the barber performs services such as haircuts, shaves, shampoos, scalp treatments, and facial massages.

Subp. 4. **Factors excluded.** The fact that barber associations or unions fix hours of work or other conditions of business operation indicates neither employment nor independent contractor status. Rules prescribed with respect to sanitary conditions by the state or city health departments are not to be considered in determining independent contractor or employment status.

5222.0040 BOOKKEEPERS AND ACCOUNTANTS.

Subpart 1. **Definition.** A bookkeeper is an individual whose work consists substantially of some or all of the following: recording items in proper journals and on special forms, posting ledgers, balancing books, compiling reports, and otherwise keeping a complete and systematic set of records of an organization's business transactions. Accountants licensed under Minnesota Statutes, chapter 326 are bookkeepers for the purposes of this part.

Subp. 2. **Independent contractor.** A bookkeeper is an independent contractor if all of the following criteria are substantially met.

A. The bookkeeper rents an office or maintains one in the home.

B. The bookkeeper makes his or her services available to the public.

C. The bookkeeper's services are rendered for a number of clients and are compensated for on a fee basis.

D. The bookkeeper pays his or her own business expenses, which include the cost of equipment, materials, and helper's wages.

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E. The bookkeeper is hired to accomplish a specific result and is not subject to direction or control over the methods or means of accomplishing it.

F. The bookkeeper's services are not performed on the premises of the purchaser of the services.

Subp. 3. **Employee.** A bookkeeper is an employee if all of the following criteria are substantially met.

A. The bookkeeper performs services at regular intervals for a single business concern for a fixed salary.

B. The bookkeeper works on the employer's premises with the necessary supplies and office help furnished.

C. The bookkeeper does not make his or her services available to the public, and does not maintain an office of his or her own.

D. The bookkeeper works during fixed hours and enjoys the usual privileges extended by an employer to employees including paid vacations, sick benefits, or bonuses.

E. The bookkeeper's services are in connection with a system of bookkeeping or accounting adopted by the employer.

F. The bookkeeper is subject to direction and control of the employer, although he or she may not be closely supervised because of the skill required to do the work.

5222.0050 BULK OIL PLANT OPERATORS.

Subpart 1. **Definition.** A bulk plant operator is an individual who:

A. distributes the products of firms engaged in the oil business;

B. receives the oil products from the firm with which he or she contracts and delivers them to the retailers in his or her territory; and

C. collects money for the products from customers and forwards it to the firm.

Subp. 2. **Independent contractor.** A bulk oil plant operator is an independent contractor if all of the following criteria are substantially met.

A. The operator is in complete charge of the entire

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plant.

B. The operator's contract with an oil firm provides that the operator will:

(1) sell the firm's petroleum products on a consignment basis and account for all money collected;

(2) sell the products within a general territory at prices set by the firm;

(3) bear all expenses except freight on the products consigned;

(4) furnish trucks and other equipment; and

(5) hire, pay, and assume full responsibility for all necessary assistants.

C. The operator advertises the firms' products at his or her own expense.

D. The operator fixes the hours and days the plant remains open, and hires, pays, and controls the employees.

Subp. 3. **Employee.** A bulk oil plant operator is an employee if all of the following criteria are substantially met.

A. The operator does not have an investment in capital assets and is paid on a salary basis.

B. The operator is required to work fixed hours or full time.

C. The operator is included in the oil firm's employee benefits plans.

D. The operator is required to comply with instructions given by the firm.

E. The operator is not personally obligated to pay wages or does not assist in paying the truck or plant maintenance expenses.

F. The operator is hired to manage the plant on a salary basis under instructions on the method and manner of doing the work.

5222.0060 COLLECTORS.

Subpart 1. **Definition.** A collector is an individual who collects, accepts, or encourages payments from the customers of a business for merchandise sold or services rendered by that

business.

Subp. 2. **Independent contractor.** A collector is an independent contractor when the criteria of item A or B is substantially met.

A. If the collector is a door-to-door or telephone collector, he or she:

(1) is assigned a specific territory and furnished lists of people from whom to collect;

(2) is not required to conform to fixed hours, devote any particular amount of time to the business, or produce a minimum volume of collections;

(3) is required to cover the territory regularly, but works out a schedule of contacts;

(4) reports to the office only to turn in collections and to get new lists;

(5) receives a fixed percentage of the collections made, out of which are paid all expenses connected with the work;

(6) is not guaranteed a minimum income; and

(7) is free to engage in other employment, including collecting accounts for other firms.

B. The collector accepts payment of bills from the customers of a third party on the collector's premises and:

(1) bills can be paid at any and all times the collector's premises is open for business;

(2) the collector is not required to be present if someone is on the premises to receive payments;

(3) the collector is not required to conform to fixed hours, or to devote any particular amount of time to the third party's business, or to give preference to the third party's customers;

(4) the collector deposits all money collected in a bank and periodically forwards to the third party copies of bank deposit receipts, and complaint forms from customers;

(5) the third party furnishes the collector with the necessary business forms, postage, and stationery;

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(6) the collector is required to purchase a surety bond;

(7) the third party pays a salary for the collection services or the collector may receive a percentage of the money collected;

(8) the collector is not trained in the work or required to follow prescribed routines; and

(9) the collector is free to conduct private business activities in addition to the collection services.

Subp. 3. **Employee.** A collector is an employee if all of the following are substantially met.

A. The services of the collector are retained to further the employer's business.

B. The collector is required to perform services pursuant to schedules established by the employer.

C. The employer has first call on the collector's time and efforts.

D. The collector has no significant business expenses or investment in the business.

E. The collector is paid on a commission or salary basis.

F. The employer has the right to establish the means and methods used in collecting.

G. The employer has the right to interfere with or set the order of the services.

H. The collector must report at the firm's office regularly for conferences, training, or instructions.

I. The hiring of helpers or substitutes is not permitted.

J. The grounds for termination are not limited to failure to meet production quotas.

5222.0070 CONSULTANTS.

Subpart 1. **Definition.** A consultant is one who confers with and advises people on matters within the particular field in which he or she specializes. The consultant has developed a peculiar knowledge or special skill of a professional or

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semiprofessional nature through extensive training and education or through wide experience in a particular occupation.

Subp. 2. **Independent contractor.** A consultant is an independent contractor if all of the following criteria are substantially met.

A. The consultant rents an office or offices at home.

B. The consultant advertises in newspapers or trade journals, or maintains business listings, or otherwise holds himself or herself out to the public as being available for a particular type of service.

C. The consultant is free to hire clerical help and assistants.

D. The consultant's success in the business world is dependent entirely on personal efforts and the demand by the public for the services.

E. The consultant operates under an arrangement where for a set fee technical advice or assistance is given.

F. The consultant's contract of service is for a specified period of time or specific purpose.

G. The consultant is free to work for others at the same time.

H. The consultant is not required to observe regular hours of work either at the firm's offices or at home.

I. The consultant agrees only to be available for conferences and consultations at the request of the firm or, as in some cases, to perform services on a specified minimum number of days.

J. The consultant makes no regular reports and is not required to attend regular conferences with members of the firm.

K. The consultant is not subject to control or supervision, but is given a free hand in doing work.

L. The consultant is employed to do a specific job and those who employ the consultant are interested only in the result accomplished and not in the manner and means of accomplishing it.

Subp. 3. **Employee.** A consultant is an employee when all

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the following criteria are substantially met.

A. The consultant is retained for services which further the employer's business.

B. The consultant is required to perform services personally.

C. The consultant's services are not available to the public.

D. The consultant has no investment or business expense.

E. The consultant provides recurring, rather than sporadic or infrequent, services.

F. The employer has the right of first call on the services of the consultant.

G. The consultant is required to report on the progress of assignments.

H. Either party has the right to end the relationship at any time.

I. The consultant receives a fixed salary determined on a weekly, monthly, annual, or similar basis.

J. The consultant cannot realize a profit or loss from the services.

5222.0080 DOMESTIC SERVICE.

Subpart 1. **Definition.** Domestic service means household services such as housecleaning, meal preparation, or invalid companionship or care.

Subp. 2. **Independent contractor.** A person providing domestic services is an independent contractor if all of the following criteria are substantially met.

A. The service is performed in connection with some episode in the life of the purported employer's family, such as an illness of short duration, preparation for a wedding, the birth of a child, or other episode of limited duration that indicates an engagement to accomplish a specific job.

B. The domestic is free to work for others.

C. The domestic may hire helpers to complete the job.

D. The domestic is paid on a job basis rather than an

hourly basis.

Subp. 3. **Employee.** A person providing domestic services is an employee if all of the following factors are substantially met.

A. The parties are not members of the same household or immediate family.

B. The services are performed regularly and over a considerable period of time.

C. The domestic received at least $500 as wages from the employer for any three-month period during the preceding 12 months. This factor is alone sufficient to establish the employment relationship under Minnesota Statutes, section 176.041, subdivision 1.

D. The domestic is not claimed as a dependent for income tax purposes.

E. The domestic is paid on an hourly, weekly, or similar time basis.

F. The domestic does not contribute to the employer's household expenses.

5222.0090 BABYSITTERS.

Subpart 1. **Definition.** Babysitters are individuals who provide childcare services to parents and are not licensed to operate day care centers under Minnesota Statutes, chapter 245. Subparts 2 and 3 are applicable only if the threshold requirements of Minnesota Statutes, section 176.041, subdivision 1, have been met.

Subp. 2. **Independent contractor.** A babysitter is an independent contractor if all of the following criteria are substantially met.

A. The babysitter takes care of another's child in the babysitter's own home or other premises under the babysitter's control.

B. The instructions given to the babysitter by the parents are general in nature, relating to matters of diet, health, rest, special foods to be given to the child, and who to contact in an emergency.

C. The babysitter is allowed to exercise judgment on matters as to the amount of time and attention the child requires, the types of meals to serve, and the manner of coping with situations which may arise.

D. The babysitter is free to perform household chores when the child does not require personal attention.

Subp. 3. **Employee.** A babysitter is an employee if all of the following criteria are substantially met.

A. The babysitter performs childcare services in the home of the child's parents.

B. The babysitter has been engaged to devote services exclusively to the performance of the employer's work.

C. The babysitter is given instructions regarding such matters as the amount of time and attention the child requires, the types of meals to serve, and the manner of coping with situations that may arise.

Subp. 4. **Babysitter services contracted through agencies.** A babysitter is an employee of an agency in the business of supplying names of babysitters if all of the following criteria are substantially met.

A. The agency maintains a register of names and addresses of individuals whom the agency determines are qualified to perform babysitter services. The agency advertises and otherwise holds itself out to the public as being engaged in the business of furnishing a babysitter service.

B. The agency fixes the fee to be charged for the services and notifies the babysitter where to report and the hours to be worked.

C. The babysitter pays the agency a specified amount or a percentage of the wages. Appearance and the performance of services must be guided by standards and rules issued by the agency.

D. The babysitter must notify the agency when not available for an assignment and usually agrees to restrict work to that furnished by the agency.

E. Any complaints as to the quality of the services

are made by the parents to the agency, and the agency may remove the babysitter's name from its register.

5222.0100 INDUSTRIAL HOMEWORKERS.

Subpart 1. **Definition.** Industrial homeworkers are persons who work in their own homes or workshops on the manufacture or assembly of articles from materials supplied by the purchaser of their services. Services provided by industrial homeworkers include typing of envelopes and the manufacture, alteration, or finishing of gloves, slippers, bedspreads, slipcovers, pottery, boxes, toys, or similar items.

Subp. 2. **Independent contractor.** An industrial homeworker is an independent contractor when all the following criteria are substantially met.

A. The homeworker works under agreements that only require the completion of assignments according to specifications and within designated times.

B. The homeworker is furnished materials by the firm and, in accordance with a pattern or general instructions, turns out a finished product which measures up to the firm's standards.

C. The completed products are paid for on a piecework basis.

D. There is no requirement that the homeworker give preference to the firm's work, although the homeworker is expected to complete assignments within a specified time.

E. The homeworker may work for others; however, in many cases, the amount of work furnished by one firm keeps the worker busy full time.

F. Unsatisfactory work is done over without pay.

G. Set hours of work are not prescribed by the firm, nor is the work supervised.

Subp. 3. **Employee.** A homeworker is an employee if all of the following criteria are substantially met.

A. The services of the homeworker are closely integrated into the business of the firm that employs the worker.

B. The homeworker is subject to virtually the same set of controls as employees who work on the firm's premises.

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C. The homeworker uses his or her own small hand tools, but large tools or heavy equipment is furnished by the firm.

D. The homeworker works or is paid on an hourly basis and renders personal services of a recurring nature.

E. The homeworker is given detailed instructions or training in the work and is required to change the work plans and the order of services when requested.

F. Although there is usually no direct supervision over the services, the firm checks the finished product and has the right to change or direct the method of operation if the completed article is not satisfactory.

G. The homeworker is required to report on progress periodically.

H. The relationship is terminable by either party, with or without cause prior to completion of a project without incurring liability for damages for noncompletion.

I. The employer may change the homeworker's work assignment.

5222.0110 LABORERS.

Subpart 1. **Definition.** Laborers are people whose work usually requires strength rather than skill, such as laborers, char-women, coal hustlers, gardeners, yard maintenance workers, landscaping and planting workers, tree trimmers, handy men, janitors, odd-job men, porters, window washers, and other unskilled workers.

Subp. 2. **Independent contractor.** The laborer is an independent contractor if all of the following criteria are substantially met.

A. The laborer generally must use business judgment to earn a livelihood. The laborer's success or failure depends on how assistants are managed, the protection of investment through proper care of tools and equipment, and the reputation established as a result of methods of doing business.

B. The services need not be performed personally.

C. The laborer holds himself or herself out to the

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public as available for furnishing a certain type of service on a job basis.

D. The laborer is free to hire assistants and the assistants are the laborer's own responsibility, that is, the laborer directs them, pays them, and is liable for the payment of taxes on their wages.

E. The laborer furnishes tools.

F. The laborer obtains work by recommendation, advertising in newspapers, or maintaining a business listing in a telephone or service directory.

G. The laborer is responsible only for completion of the job within a certain time and is free to use personal methods and means for doing the work.

H. The laborer agrees to provide lien waivers upon completion of the job.

Subp. 3. **Employee.** A laborer is an employee if all of the following criteria are substantially met.

A. The services must be performed personally.

B. The laborer works on employer premises or at locations assigned by the employer, at specified times, and with tools and facilities furnished by the employer. The services may be provided on a permanent, recurring, or itinerant basis.

C. Pay is computed on a time rather than a lump-sum basis.

D. The employer has the right to stop the laborer on one job and start on another, to speed up or slow down the worker, and to express dissatisfaction with the work and to have it redone.

E. The laborer is not responsible for damages for noncompletion of the work. If the laborer quits prior to completing the job, the laborer is not responsible for finding a replacement.

5222.0120 MUSICIANS; GENERAL.

The status of musicians or groups in parts 5222.0120 to 5222.0140 is not affected by the fact that an American Federation of Musicians Form B Contract, to which the leader is

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a party, purports to make the purchaser their employer. The actual relationship, rather than the terms of the contract, controls.

5222.0130 MUSICIANS; COOPERATIVE ORCHESTRAS.

Subpart 1. **Definition.** A cooperative orchestra is a musical group operated on a cooperative or partnership basis. All of the members have a voice in determining the membership, the engagements to be accepted, the division of the money received, and all other phases of the orchestra's operations. By common consent of the members one of the group may be designated as a leader whose duties are to act as spokesperson for the group and to negotiate engagements in the orchestra's name. A business manager or set manager or other nonplaying member may be a member of a cooperative orchestra.

Subp. 2. **Independent contractor.** All the members, including the leader, of an orchestra are independent contractors if all of the following criteria are met.

A. Payment is not on an hourly basis. Proceeds from engagements are used to pay expenses and the remainder is distributed as determined by members.

B. The group is free to work for other purchasers of its services.

C. The purchaser does not have the right to discharge a member of the group, or to dictate the style or manner of playing the music.

D. The group may be liable for damages for nonperformance if it quits prior to completing its engagement with a purchaser.

Subp. 3. **Employee.** Members of a cooperative orchestra are employees if all the following criteria are substantially met.

A. The individuality of the orchestra is subordinated to the enhancement of the purchaser's reputation.

B. The work relationship is not short term but is of a continuing nature.

C. The purchaser has the right to discharge the leader or any of the orchestra members, to change the style or

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type of music, to have first call on the services, and to restrict the orchestra's outside activities.

D. The purchaser pays the members on an hourly or time basis and bears the expenses of the orchestra.

5222.0140 MUSICIAN; ORCHESTRA LEADER.

Subpart 1. **Definition.** An orchestra leader or union contractor is the assembler or leader of a musical group that plays music in public for compensation.

Subp. 2. **Independent contractor.** An orchestra leader is an independent contractor if all of the following conditions are substantially met.

A. The leader selects the members and rehearses and directs them.

B. The leader holds out to the public as being able to furnish a musical organization and enter into contracts to furnish music.

C. The leader has the primary right to control the orchestra members as to how, when, and where they work.

D. The leader is charged with all expenses the orchestra incurs, and, after paying expenses and the salaries or hourly wages of the other members, suffers a loss or realizes a profit from the undertaking.

E. The leader is paid a lump sum for an engagement.

F. The purchaser of the music deals directly with the leader.

G. The purchaser retains only such control over the leader as to ensure the attainment of the desired result, such as the privilege of making suggestions on the type or style of music and number of musicians wanted.

Subp. 3. **Subcontractor.** Where the leader is an independent contractor, the purchaser of music is responsible for the workers' compensation coverage of group members other than the leader under Minnesota Statutes, section 176.205, unless those members are independent contractors with respect to the leader or the purchaser.

Subp. 4. **Employee.** The orchestra leader or assembler and

members of the musical group are employees of the purchaser of musical services if all of the following criteria are substantially met.

A. The purchaser hires a musician (usually called a union contractor) to assemble an orchestra to play at the purchaser's establishment. The purchaser specifies the number of musicians, the type of instruments, and the price per musician.

B. The assembler of the group may be the orchestra leader if the purchaser designates him or her as the leader.

C. The purchaser may accept all the musicians who have been assembled or make changes in the personnel with or without an audition.

D. The purchaser pays for the services on an hourly basis and is responsible for the business expenses of the group.

5222.0150 OUTSIDE COMMISSION SALESPEOPLE OR MANUFACTURER'S REPRESENTATIVES; GENERAL.

The following factors, taken together, are not sufficient to establish an employment relationship for an outside commission salesperson or manufacturer's representative under parts 5222.0160 to 5222.00180 territorial restrictions, fixing of sales prices and terms by the companies, the furnishing of leads, working off premises of the employer, and requirements that the salesmen investigate customers' complaints, collect delinquent accounts, and refrain from selling for competitors.

5222.0160 TRAVELING SALESPEOPLE.

Subpart 1. **Definition.** A traveling salesperson is associated with a manufacturer or distributor whose products the salesperson sells directly to wholesalers or retailers. The salesperson is assigned to territories and furnished with price lists and samples or descriptions of the merchandise to be sold. The salesperson is required to sell the merchandise at prices set by the firm and the firm reserves the right to accept or reject orders. The firm fills the orders by shipping directly to the customers and billing the customers directly.

The salesperson receives compensation from the firm in the form of a percentage of the price the customers pay for the merchandise. The salesperson may be required to work full time, to not work for competitors, or to produce a certain amount of business regularly.

Subp. 2. **Independent contractor.** A traveling salesperson is an independent contractor if all the following conditions are substantially met.

A. The salesperson is free to solicit when, where, and how he or she pleases.

B. The salesperson chooses working hours and schedule of calls.

C. The salesperson chooses his or her own means of travel and is responsible for the costs of travel.

D. The salesperson pays his or her own expenses.

Subp. 3. **Employee.** A traveling salesperson is an employee if all the following conditions are substantially met.

A. The salesperson is required to appear at or report to the firm's offices regularly.

B. The salesperson must work during fixed hours or at certain times.

C. The salesperson must follow and report on leads.

D. The salesperson is required to take part in sales meetings or training courses.

E. The salesperson is required to canvass territory at regular intervals.

F. The firm is dependent principally on the services of traveling salespersons for the disposition of its merchandise.

5222.0170 HOUSE-TO-HOUSE COMMISSION SALESPEOPLE.

Subpart 1. **Definition.** A house-to-house commission salesperson sells door-to-door at retail prices to the customer. The salesperson does not purchase stock at wholesale, maintain that stock for resale, or retain the risk of loss if the stock is not sold.

Subp. 2. **Independent contractor.** A house-to-house commission salesperson is an independent contractor if all of

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the following criteria are substantially met.

A. If assigned to territories, the salesperson is not granted exclusive rights to them.

B. The salesperson is not required to canvass his or her territories within any specified time or to work during fixed hours or at certain times.

C. The salesperson receives no training, is not required to follow an established routine or schedule, and devises his or her own methods and means of selling.

D. The salesperson pays his or her own business expenses.

E. The salesperson is not required to produce any minimum volume of business or follow leads furnished by the company.

Subp. 3. **Employee.** A house-to-house commission salesperson is an employee if all of the following criteria are substantially met.

A. The salesperson works for only one company and on a full-time basis.

B. The services of the salesperson are an important part of the company's business.

C. Although the salesperson may not be required to report to the company's office at regular intervals, he or she often receives leads and instructions through the mail which must be followed.

D. The salesperson is required to file regularly a report of activities with the company.

E. The salesperson is required to canvass his or her territory regularly.

F. The salesperson is required to attend sales meetings or take part in training courses.

G. The salesperson may be visited by a sales manager or supervisor who instructs and helps in developing sales techniques and other matters.

H. The salesperson is expected to produce a certain amount of business to continue the relationship.

5222.0180 HOUSE-TO-HOUSE DEALER SALESPEOPLE.

Subpart 1. **Definition.** A house-to-house dealer salesperson buys stocks of commodities at wholesale from a company and sells them at retail. In other respects, the dealer is similar to ordinary retail merchants and house-to-house commission salespeople.

Subp. 2. **Independent contractor.** A dealer is an independent contractor if all of the following criteria are substantially met.

A. The dealer is not required to work during fixed hours or at certain times, to follow any particular routes or schedules or to report on his or her activities.

B. The dealer keeps substantial inventories and has automobiles or trucks to deliver merchandise.

C. The dealer may employ others.

D. Compliance with suggestions or attendance at salesmanship meetings are optional with the dealers.

E. The dealer is not required to solicit prospective purchasers identified by the company.

F. The dealer chooses working hours and methods of solicitation.

G. The dealer pays business expenses and, by selling on credit, takes a risk of loss.

H. The dealer is dependent for a livelihood on personal efforts and ingenuity in establishing clienteles and good reputations.

Subp. 3. **Employee.** A dealer is an employee if all of the following criteria are substantially met.

A. The dealer must report regularly on sales, prospects, and work activities.

B. The dealer must report regularly for sales meetings and pep talks.

C. Although not usually required to work during hours fixed by the firm, the dealer is expected to meet a certain quota.

D. The dealer is restricted from selling on credit

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and must abide by prices set by the company.

E. Merchandise may be returned to company with no loss to the dealer.

F. The dealer is furnished leads and required to follow-up and report.

G. The dealer is required to concentrate on certain products listed as "specials" and follow schedules or routes worked out by the company.

H. If sales fall off, a manager or other company representative investigates and instructs the dealer how to increase sales.

I. Helpers may be provided by the company for dealers who maintain large volumes of sales.

J. The relationship is terminable by either party on short notice and without liability to the employee for noncompletion.

K. Where the dealer trains others, the dealer is paid and may be elevated to a managership.

5222.0190 AGENT DRIVERS.

Subpart 1. **Definition.** An agent driver is a salesperson who drives a truck in selling and delivering bread, milk, meat, beverages, laundry, dry-cleaning, or similar services. The driver may sell to consumers at retail prices or at wholesale to retailers.

Subp. 2. **Independent contractor.** An agent driver is an independent contractor if all of the following criteria are substantially met.

A. The driver does not contract with the firm to render personal services but only to buy a certain amount of a firm's products regularly.

B. The driver may hire and pay helpers or use substitutes.

C. Although the driver may work full time, the driver does so by choice; and selects working hours.

D. The driver selects customers, sets prices, and often sells on credit.

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E. The driver pays truck maintenance costs and other business expenses.

F. The driver cannot return unsold products to the firm.

G. Either party may terminate the relationship at any time without incurring liability.

Subp. 3. **Employee.** An agent driver is an employee if all the following criteria are substantially met.

A. The driver is assigned a route and required to cover it at regular intervals.

B. Helpers or substitutes are not permitted.

C. Prices are set by the company.

D. The driver cannot handle competing lines.

E. The driver is required to keep reports of sales and other matters.

F. The driver collects from customers and turns money over to the company.

G. The driver has no authority to determine whether sales may be made on credit.

H. The driver reports to the company office at specified times to load trucks, return unsold goods, and report on activities as requested.

I. The driver is required to follow leads.

J. The driver is expected to solicit new customers and adjust complaints.

K. The driver may quit or a firm may fire the driver on short notice, and neither is liable for damages for noncompletion.

L. The driver receives paid vacation, sick benefits, or other similar benefits offered to nondriver employees of the firm.

5222.0200 PHOTOGRAPHERS' MODELS.

Subpart 1. **Definition.** A photographer's model is a professional who poses for photographs that are used for commercial purposes. The photographs are reproduced and appear in magazines, newspapers, or similar media to aid in advertising

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commercial products. The model is knowledgeable or trained in such subjects as the art of make-up, fashion, hairstyling, acting, and posture.

Subp. 2. **Independent contractor.** A photographer's model is an independent contractor if all of the following criteria are substantially met.

A. The model engages a booking agent for a certain compensation, usually ten percent of the model's fees. The agent makes and arranges appointments for the model.

B. Fees are fixed by the agent, usually on an hourly basis.

C. The model reserves the right to limit the time or period of work and the right to work only during certain hours.

D. The model releases property rights in each specific photograph that is to be used commercially.

E. The model supplies his or her own wardrobes appropriate to the roles he or she is engaged to portray.

F. The model is free to pose for anyone who desires his or her services.

G. The model is not engaged on a permanent or periodic basis but solely for specific jobs and the model reserves the right to cancel bookings made by his or her agents.

H. The creation and enactment of the roles assigned them are left to the models' own discretion and initiative.

I. The model is free to use his or her skill and training in other fields of business activity, such as radio, movie shorts, fashion shows, and television shows.

Subp. 3. **Employee.** A photographer's model is an employee if all of the following criteria are substantially met.

A. The model works for only one or two photographers or firms and is paid a salary or guaranteed minimum wage to work during fixed hours on the employer's premises.

B. The model is required to conform to instructions or suggestions on, among others, costume, coiffure, general make-up, posture, or the position and expression to assume in an assigned role.

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C. The model is paid a salary for first call on his or her services and on a full-time basis or part-time basis.

D. The work is performed mostly on company premises and is done in accordance with a supervisor's or manager's views on the best method of illustrating the good points of the garments or other products being modeled.

E. Either party may terminate the relationship at any time.

5222.0210 PROFESSIONAL PERSONS.

Subpart 1. **Definition.** A professional is a person in an occupation that requires education equivalent to college graduation or beyond and involves compliance with professional and statutory licensing or registration standards before the individual can practice. The professional field includes architects, attorneys, certified public accountants, and engineers.

Subp. 2. **Independent contractor.** A professional is an independent contractor when all of the following criteria are substantially met.

A. The professional sets up his or her own business office.

B. The professional hires and directs assistants or helpers.

C. The professional pays all expenses in connection with the business.

D. The professional offers services to the public.

E. The professional works at hours of his or her own choice.

F. The professional is dependent for a livelihood upon the amount of time, energy, and ingenuity applied to the work.

Subp. 3. **Employee.** A professional is an employee if all of the following criteria are substantially met.

A. The professional subordinates activities to the interests of the employer by working under conditions that make the professional's services an integral part of another's

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business.

B. The professional works when and where a firm dictates.

C. The professional is furnished an office and office facilities, and business expenses are met by the firm.

D. The professional is paid a fixed salary determined on a weekly, monthly, annual, or similar basis.

E. The professional's services are subject to supervision and review.

F. The professional cannot hire a substitute or helper.

G. The professional may be discharged at will and has the right to terminate the relationship at any time without liability.

H. The professional incurs no expenses nor make any investment.

I. The relationship is continuing.

5222.0220 DOCTORS OF MEDICINE; PART-TIME SERVICES FOR INDUSTRIAL FIRMS.

Subpart 1. **Definition.** Doctors are persons whose work requires licensure pursuant to Minnesota Statutes, section 147.02.

Subp. 2. **Independent contractor.** Doctors who, in addition to their private practices, enter into arrangements with industrial firms to examine and treat the firm's employees on a part-time basis, are independent contractors if all of the following criteria are met.

A. The firm is interested in securing a medical service rather than the personal service of the doctor and an employment relationship is not contemplated under the terms of the agreement between the parties. The doctor, in effect, accepts the firm as an additional client in the doctor's private practice.

B. The doctor has the right to leave the firm's premises during working hours if an emergency arises in private practice.

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C. The doctor has the right to send a substitute to perform the services.

D. The doctor does not have the right to terminate the relationship on short notice.

E. Direct supervision and control over the services were not contemplated by the parties to the agreement.

Subp. 3. **Employees.** Doctors described in subpart 1 are employees if all of the following criteria are substantially met.

A. The doctor's services are materially integrated into the operating organization of the firm.

B. The doctor performs services of a substantial nature for the firm on a regular and continuing basis.

C. The doctor is subject to supervision and control by the firm to the extent necessary to require compliance with its general policies and procedures.

D. The doctor is accorded the rights and privileges that the firm extends to its employees generally.

Subp. 4. **Definition of factors.** This subpart explains the factors listed in subpart 3.

A. Materially integrated is determined by factors such as:

(1) the payment of a salary or fixed rate of pay as compared to remuneration on a fee basis;

(2) a contract term indicating a mutual intention to create an employer and employee relationship;

(3) the firm engages the services of a substitute in the event of the doctor's absence;

(4) the remuneration is reported as wages for social security purposes; and

(5) the doctor, for income tax purposes, reported the remuneration as wages.

B. Regular and continuing basis means agreement to a schedule of definite and fixed hours of service and the requirement to follow the schedule without substantial deviation.

C. Compliance with policies and procedures exists where the methods, routines, and procedures followed by the

doctor are subject to supervision. The supervision may be of varying degree and nature, for example, supervision exercised by a medical director may include somewhat detailed control over the physician's medical routines where the supervision exercised by a hospital administrator may lay less emphasis on this aspect. However, the factor of compliance is met where the physician is required to follow the employer's rules regarding the physician's methods of operation generally, including the obligation to treat assigned patients, the report the physician must submit, the priorities the physician must follow both medically and administratively, and the standards the physician must maintain regarding equipment and cleanliness.

D. Rights and privileges include vacation and sick leave with pay, holiday pay, severance pay, and pension and insurance plans.

5222.0230 REAL ESTATE AND SECURITIES SALESPEOPLE.

Subpart 1. **Definition.** Real estate salespeople are persons licensed as real estate salespersons under Minnesota Statutes, chapter 82. Securities salespeople are persons licensed as agents under Minnesota Statutes, chapter 80A.

Subp. 2. **Independent contractor, real estate.** A real estate salesperson who is a qualified real estate agent under the Internal Revenue Code of 1954, section 3508(b)(1) is an independent contractor. The Internal Revenue Code of 1954, section 3508(b)(1) is incorporated by reference as the standard to be used under this chapter. A real estate salesperson who is not a qualified real estate agent under that standard is nonetheless an independent contractor if all the following conditions are substantially met.

A. The salesperson is licensed to one broker and the cost of the license is paid by the salesperson.

B. The broker makes available to the salesperson office facilities and property listing, and assists the salesperson by giving advice and by cooperating in his or her endeavors.

C. The broker furnishes the salesperson with

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necessary business forms, stationery, cards, and instructs him or her in office procedures and business policies either verbally or by means of written instructions, such as sales manuals.

D. The salesperson agrees to work diligently for the broker and to conduct his or her business and regulate his or her habits so as to maintain and increase the good will and reputation of the broker.

E. The salesperson agrees not to sell for other brokers.

F. The salesperson provides his or her own transportation and pays all expenses incurred in the solicitation of business.

G. The salesperson generally reports to work daily but works no fixed number of hours.

H. Meetings are held in the broker's office on a regular basis, usually weekly, but attendance at these meetings is voluntary.

I. Sales are closed in the name of the broker.

J. The money is turned over to the broker who pays the salesperson commissions at periodic intervals.

K. The salesperson's success is primarily dependent on his or her own initiative and effort.

Subp. 3. **Independent contractor, securities.** A securities salesperson is an independent contractor if all the following conditions are substantially met.

A. The securities dealer engages the salesperson in the furtherance of the business.

B. The salesperson is licensed to a particular dealer.

C. The dealer furnishes the salesperson with desk space, telephone and telegraph facilities, market quotations, statistical and bookkeeping services, and clerical assistance.

D. The salesperson agrees to work diligently for the dealer and to abide by all laws, rules, and regulations under which the dealer operates the business.

E. The salesperson is not required to work fixed

hours.

F. The salesperson concludes sales in the name of the dealer and pays over the money to the dealer.

G. The salesperson is paid on a commission basis at periodic intervals.

H. Under certain circumstances, the salesperson may bear a part of the losses resulting from a transaction.

I. Sales meetings are held regularly, but attendance is voluntary.

J. The salesperson's income is primarily dependent on his or her own initiative and effort.

Subp. 4. **Employee.** A salesperson is an employee when all of the following criteria are substantially met.

A. the salesperson is paid a salary or guaranteed minimum wage;

B. the employer requires fixed hours of work;

C. the employer requires that nearly all work be done on the broker's or dealer's premises;

D. the employer requires attendance at employer's office at specific times;

E. the broker or dealer has the right to interrupt or set the order of services;

F. the employer provides instruction or training in how the salesperson approaches prospects, closes sales, and works on particular problems; and

G. the employer requires the salesperson to report on activities.

5222.0240 REGISTERED AND PRACTICAL NURSES.

Subpart 1. **Definition.** Registered nurses are persons licensed as such pursuant to Minnesota Statutes. Practical nurses are persons licensed as such pursuant to Minnesota Statutes.

Subp. 2. **Independent contractor.** A nurse is an independent contractor if:

A. The nurse holds himself or herself out to the public as exercising an independent calling requiring

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specialized skills.

B. The nurse has full discretion in administering his or her professional services. Full discretion is present even though the nurse may be subject to the supervision of the attending physician.

C. The nurse is retained full time by the purchaser and the work relationship between the purchaser and the nurse is expected to terminate when the job is completed.

D. The nurse is not retained full time by a purchaser and the nurse is available to others for private duty nursing.

Subp. 3. **Employee.** A nurse who works for a hospital, clinic, nursing home, public health agency, or as an office attendant for a private physician is an employee if all the following criteria are substantially met.

A. The nurse works full time on the regular staff of the firm.

B. The nurse works for a salary and follows prescribed routines during fixed hours when he or she is not available for private duty nursing.

C. The nurse's services are integrated into the employer's business.

D. The employer has the right to set the order of and supervise the services.

5222.0250 UNLICENSED "NURSES."

Nurses' aides, domestics, and other unlicensed individuals who continue to classify themselves as practical nurses are, in general, insufficiently trained or equipped to render professional or semi-professional "nursing." Their services are normally those expected of maids, servants, and domestics, for example, bathing the individual, combing the individual's hair, reading, arranging bedding and clothing, preparing or serving meals, and occasionally giving oral medication left in their custody. The status of these persons is determined pursuant to part 5222.0080, domestic service.

5222.0260 TAXICAB DRIVERS.

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Subpart 1. **Definition.** Taxicab drivers are persons who offer fee for service auto transportation within a limited area.

Subp. 2. **Independent contractor.** A driver is an independent contractor if all of the following criteria are substantially met.

A. The driver owns and drives his or her own cab, or leases it on a flat rate basis and pays a specified rental on a daily, weekly, or similar time basis.

B. The driver is free to work the shift he or she chooses, and there is no control over when and where the driver works.

C. The driver's sole compensation is the fares and tips collected from patrons.

D. The driver is required to comply with government rules and regulations and with firm regulations that are meant to ensure proper care and handling of the cab.

E. The driver is not required to report his or her whereabouts and is not subject to instructions on where to seek patrons.

F. If the driver leases the cab, the lessor is interested only in receiving the cab rental and, in many cases, payment for gasoline and oil that the driver is required to buy from the lessor.

G. The opportunity for profit or risk of loss rests with the driver, not the lessor.

Subp. 3. **Employee.** A taxicab driver is an employee if all the following criteria are substantially met.

A. The employer exercises control over the driver while the driver is in possession of the cab.

B. The driver must work during specified hours or on assigned shifts, pick up passengers on call, and report his or her whereabouts periodically.

C. The driver must account for fares collected.

D. The employer requires that the driver perform the services personally.

E. The employer gives instructions on matters of

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appearance, behavior, manner of seeking patrons, routes, order of services, and time off from duty.

F. Payment is in the form of a salary or salary plus a percentage of fares.

G. The driver is required to report personally and regularly or furnish written reports.

H. There are no business expenses on the part of the driver.

I. Both parties have the right to terminate the relationship at any time.

J. There is no investment or opportunity for profit or risk of loss on the part of the driver.

5222.0270 TIMBER FELLERS, BUCKERS, SKIDDERS, AND PROCESSORS.

Subpart 1. **Definition.** Timber fellers employ chainsaws or other mechanical devices mounted on logging vehicles to fell trees. Trees so felled may either be delimbed at the site or subsequently at roadside landings.

Buckers cut trees into merchantable lengths, with either chainsaw or heavier machinery such as slashers, harvesters, and processors. These operations may also be conducted either at the felling site or at roadside. In either case the product is piled or otherwise accumulated to facilitate subsequent transportation.

Skidders or forwarders either drag logs or trees to roadside landings, or load and transport logs or shortwood (fuelwood or pulpwood) to similar destinations.

Timber harvesters and processors combine two or more of the operations described above.

Mechanical debarking and/or chipping may also be coordinated with skidding or forwarding operations.

Chips are usually blown into semi-trailer vans for delivery to mills for remanufacture or to furnaces for fuel.

Subp. 2. **Neutral factors.** Due to the nature of the work and certain customs in the field, the following factors are neutral: lack of fixed hours of work, payment on a piecework basis, ownership of small tools, and requirements that the

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product of the work be within overall specifications.

Subp. 3. **Independent contractor.** A feller, bucker, skidder, or processor is an independent contractor if all of the following criteria are substantially met.

A. The worker is granted timber rights to tracts of land and legally binds himself or herself to remove all or certain parts of the timber within specified times at set prices.

B. The worker bargains for "package" jobs which he or she will do by methods of his or her own choice subject to production specifications required by the contracting company.

C. The worker is paid to obtain a result, which does not necessarily depend on his or her own personal services.

D. The worker is free to hire and direct others to do the work and the worker is responsible for expenses incurred in fulfilling the contract.

E. The worker supplies the necessary equipment and sometimes the tools used by the helpers.

F. The worker determines the working hours and rates of pay, and otherwise controls the helpers' working conditions.

G. The worker holds himself or herself out to the public as a contractor and sometimes holds several logging contracts at the same time.

H. The worker is in a position to make a profit or suffer a loss, depending on the management of helpers, the care of the tools and equipment, and the methods used for doing the work.

I. As long as the worker produces final results that measure up to specifications, there is no desire or legal right to interfere with the worker's methods.

Subp. 4. **Employee.** A feller, bucker, skidder, or processor is an employee if all of the following criteria are substantially met.

A. The feller, bucker, skidder, or processor is assigned specific portions of the area to be harvested, but the right to work in other portions is not given to him or her exclusively.

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B. The company assigns a number of workers to each area. They are told the kind and size of trees to cut. Trees designated to be cut because of a conservation or sustained-yield program do not indicate employment.

C. The company foreman periodically inspects the work area to be harvested and, if not satisfied with the progress being made, replaces the workers with another crew.

D. The crews may be shifted from one work area to another to speed up operations and if a worker is ill or not doing satisfactory work the foreman may replace the worker.

E. The worker chooses his or her own hours of work, but is required to finish each work area within a certain time and to do so usually requires long and regular hours of work.

F. The worker may be paid on a piecework basis or by the cord, but generally the company will not pay for products that do not measure up to specifications. Keeping records of wages paid and hours worked is not indicative of employment if it is required only to ensure that the products may be shipped in interstate commerce.

5222.0280 SAWMILL OPERATORS.

Subpart 1. **Definition.** Sawmill operators manage sawmills. A sawmill is used to convert logs into lumber or other forest products. The mills may be stationary or portable. Moving the logs into position, the sawing operation itself, and the stacking or removal of the products often require the services of a crew of workers.

Subp. 2. **Independent contractor.** A sawmill operator is an independent contractor if all of the following criteria are substantially met.

A. The operator has a substantial investment because he or she owns all or part of the mill and equipment used to move logs, lumber, or other forest products.

B. The operator contracts to saw, or harvest and saw, timber at so much per thousand board feet. The operator may bind himself or herself by contract to complete the job within a set time or to produce a daily or weekly quota.

C. The work calls for independent thought and action based on business judgment, experience, and training.

D. The operator contracts to do a specific job, using his or her own methods. The only control over the work concerns attainment of an acceptable result.

E. The operator hires, pays, and directs his or her own crews.

F. The operator is not required to do the work personally, but is responsible for its being done.

G. The operator is in a position to lose or profit from management of the workers and care of the equipment.

H. The operator is free to work for others.

I. There is no restriction of activities so long as the sawmill turns out products that meet the overall specifications in the contract.

Subp. 3. **Employee.** A sawmill operator is an employee if all of the following criteria are substantially met.

A. The purchaser of the services pays the cost of running the mill, even though the operator may own the mill.

B. The operator may pick a crew to operate the mill, but the company pays them and can fire them for poor work.

C. The company has the right to tell the operator what hours to work and require the operator to keep records of the amount produced and on hand daily.

D. The mill is moved from one tract to another as the company requires.

E. The operator may be paid a salary or pay may be computed on a piecework basis.

F. The services are terminable by either party at any time.

G. The operator has no business expenses nor opportunity for profit or risk of loss.

H. The operator cannot work for others.

5222.0290 TRUCK OWNER-DRIVERS.

Subpart 1. **Definition.** A truck owner-driver is any individual, partnership, or corporation (hereinafter referred to

as "individual") who owns or holds a vehicle as defined in subpart 2 under a bona fide lease and who leases that vehicle together with driver services to an entity which holds itself out to and does transport freight as a for-hire or private motor carrier.

Subp. 2. **Independent contractor.** In the trucking industry, an owner-operator of a vehicle that is licensed and registered as a truck, tractor, or truck-tractor by a governmental motor vehicle regulatory agency is an independent contractor, not an employee, while performing services in the operation of his or her truck, if each of the following factors are substantially present.

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

B. The individual is responsible for the maintenance of the equipment.

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

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

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

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

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

Subp. 3. **Employee.** An owner operator of a vehicle as defined in subpart 2 is an employee, not an independent contractor, while performing services in the operation of the individual's truck, if all of the following criteria are

substantially met.

A. The individual is paid compensation for his or her personal services:

(1) based solely on wage by the hour or a similar time unit that is not related to a specific job or freight movement;

(2) on a premium basis for services performed in excess of a specified amount of time; and

(3) from which FICA and income tax is withheld.

B. The individual is treated as an employee by the firm with respect to fringe benefits offered to employees by the firm.

C. The individual usually works defined hours.

D. The employer requires that the individual must perform the work personally and cannot change drivers.

E. The individual has no choice in the acceptance or rejection of a load.

F. The individual and firm have no written contract; or, if there is a written contract, it does not specify the individual's relationship with the firm as being that of independent contractor.

5222.0291 WASTE MATERIALS HAULERS.

Part 5222.0290 applies to truck owner-drivers who meet the definition of part 5222.0290, subpart 1 except that they transport waste materials instead of freight.

5222.0292 MESSENGERS/COURIERS.

Subpart 1. **Definition.** Messenger/couriers are vehicle drivers who deliver cargo for a company licensed as a local cartage carrier or courier service carrier under Minnesota Statutes, chapter 221.

Subp. 2. **Independent contractor.** A messenger/courier is an independent contractor if all of the following criteria are substantially met.

A. The messenger/courier owns and drives his or her own vehicle.

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B. The messenger/courier is free to accept or reject jobs from a carrier and there is no control over when the individual works.

C. The messenger/courier is compensated per delivery.

D. All expenses are paid by the messenger/courier and the opportunity for profit or loss rests with him or her.

E. The messenger/courier is responsible for the operating costs, including fuel, repairs, supplies, and vehicle insurance.

F. The messenger/courier determines the details and means of performing the services, such as the selection of routes and the order of deliveries.

G. The messenger/courier is responsible for the completion of a specific job and is liable for failure to complete the job.

Subp. 3. **Employee.** A messenger/courier is an employee if all of the following criteria are substantially met.

A. The messenger/courier must work during specified hours or an assigned shift.

B. Payment is on a salary or hourly basis rather than per delivery basis.

C. The employing carrier reimburses the messenger/courier for all expenses.

D. The employing carrier furnishes the delivery vehicle.

E. There is no investment or opportunity for profit or risk of loss on the part of the messenger/courier.

F. The employing carrier furnishes insurance for the vehicle used by the messenger/courier.

5222.0300 VARIETY ENTERTAINERS.

Subpart 1. **Definition.** A variety entertainer is a person who entertains and amuses audiences by means of acts or skits, dances, readings, feats of skill, songs, or comedy acts. The entertainer performs in the legitimate and burlesque theaters, movie houses, circuses, fairs, hotels, and night clubs.

Variety entertainers specialize in one or two types of

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acts. The more talented create and develop their own acts or routines and sometimes train others to help perform them. They often work in pairs or as members of troupes.

Subp. 2. **Neutral factors.** The status of a variety entertainer is not determined by the entertainer's entering into the form B contract of the American Federation of Musicians. This contract purports to establish an employer and employee relationship between the purchaser of the services and the entertainer. The actual relationship, rather than the terms of the contract, governs.

Subp. 3. **Independent contractor.** A variety entertainer is an independent contractor if all of the following criteria are substantially met.

A. The entertainer performs acts or routines as a series of short-term engagements for a number of different operators of theaters, night clubs, restaurants, and similar establishments.

B. The entertainer's contract, which is usually obtained through booking agents or personal representatives, specifies only the time, place, and duration of each engagement, and the pay.

C. The entertainer furnishes his or her own music arrangements, stage props, and dress.

D. The entertainer's act is not an integral part of another's business.

E. The entertainer maintains a high degree of individuality and establishes a reputation based on the acceptance by the audiences for which the entertainer performs.

Subp. 4. **Employee.** A variety entertainer is an employee when all of the following criteria are substantially met.

A. The entertainer is subject to supervision over the number, time, place, and length of rehearsals and performances, and as to duty and behavior, and is bound by rules and regulations to the purchaser of the services.

B. The entertainer's variety acts may undergo considerable change in order to suit the employer's purpose. It

may be shortened, lengthened, or moved from one spot to another to weld it, with others, into one complete show or to coordinate it with other activities. In that case, individuality of the performer is subordinated to the purpose of enhancing the reputation of the purchaser of the services.

C. The entertainer's performance becomes an integral part of another's business.

D. The entertainer is engaged on a long-term basis.

E. The entertainer may not work for others.

F. The entertainer has no opportunity for profit or risk of loss, must frequently work with others, and can be shifted from one place to another.

G. The entertainer can be discharged at any time.

H. The entertainer cannot hire helpers or substitutes.

5222.0310 SPORTS OFFICIALS.

Subpart 1. **Definition.** A sports official is an individual engaged to referee games of sport such as basketball, hockey, or football where the level of competition requires the sports official to be a member of or certified by an organization whose purpose is to maintain minimum standards and qualifications of sports officials.

Subp. 2. **Independent contractor.** A sports official is an independent contractor if all the following conditions are substantially met.

A. There is a written contract between the sports official and the party or association engaging the services of the sports official that states specifically that the sports official is an independent contractor.

B. Payment to the sports official is for a set fee for each game officiated.

C. The official is free under the terms of the contract to accept or reject assignments of any game.

D. The sports official is not limited to exclusively officiating with the party engaging the services as a sports official.

Subp. 3. **Employee.** A sports official is an employee if

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all of the following criteria are substantially met.

A. The official is paid on an hourly, weekly, or similar time basis.

B. The official must work at the times and places designated by the purchaser of the official's services, and is not free to reject assignments.

C. The official is not free to sell his or her services to other parties while working for the purchaser.

D. The relationship is terminable at will without any liability to the official.

5222.0311 JOCKEYS.

Subpart 1. **Definition.** A jockey is a person who is licensed under Minnesota Statutes, chapter 240 to ride race horses for compensation as a jockey or apprentice jockey.

Subp. 2. **Independent contractor.** A jockey is an independent contractor with respect to the racetrack, trainer, and horse owner if all of the following criteria are substantially met.

A. Arrangements for rides are made by the jockey or by an agent of the jockey who receives a commission from the jockey.

B. The jockey is free to ride the horses of any stable.

C. The jockey is free to accept or reject a call.

D. The jockey provides his or her own saddle.

E. The trainer instructs the jockey regarding the nature of the mount, the setup of the race, and the trainer's expectations of the running of the race. The jockey is free to disregard the instructions of the trainer, and may decide the route to be taken, the rate of speed of the horse, and similar matters regarding the running of the race.

F. Payment is a fee paid on a per-race basis from the horseperson's account of the racetrack.

Subp. 3. **Employee.** A jockey is an employee of the trainer if all of the following criteria are substantially met.

A. The jockey rides only for the employing trainer or

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the jockey rides for other trainers only with the permission of the employing trainer.

B. The jockey is not free to reject the employing trainer's call.

C. The trainer provides or pays for the jockey's saddle.

D. The jockey is not free to disregard the instructions of the trainer regarding the running of the race except for safety reasons.

E. The jockey is paid a salary or wage by the trainer on a time rather than per-race basis; compensation usually includes room and board, and the wage may be paid from the horseperson's account at the racetrack.

5222.0312 TRAINERS.

Subpart 1. **Definition.** A trainer is a person who is licensed as a trainer under Minnesota Statutes, chapter 240.

Subp. 2. **Independent contractor.** A trainer is an independent contractor with respect to the racetrack and to the owners if all of the following criteria are substantially met.

A. The trainer sets a fee which covers the daily fee, and bills the owner for the day pay and any additional supplies or services incurred in the care of the horse.

B. Tack, feed, board, and all supplies necessary for the ordinary care of the horse are provided by the trainer.

C. The trainer has a substantial capital investment in tack, equipment, and supplies.

D. The trainer makes all decisions regarding management of the horse while the horse is at the trainer's stable. If the trainer disagrees with instructions of the owner, the trainer is free to tell the owner to remove the horse from the trainer's care, and the owner must comply.

E. The trainer is free to stable and train the horses of other owners.

Subp. 3. **Employee.** A trainer is an employee of an owner if all the following criteria are substantially met.

A. The trainer is paid on a salary, wage, or similar

time basis.

B. Tack, feed, board, equipment, and supplies for the care of the horse are provided by the owner.

C. The stables are owned or operated by the owner of the horses.

D. The trainer must comply with instructions of the owner regarding management of the horse, although the owner generally relies on the expertise of the trainer.

E. The trainer may stable and train the horses of others only with the permission of the employing owner.

F. The trainer's hours of work are set by the owner of the horse.

5222.0320 GENERAL CRITERIA FOR NONSPECIFIED OCCUPATIONS.

Parts 5222.0330 and 5222.0340 shall be used to determine if an individual is an independent contractor or an employee where the occupation is not defined in parts 5222.0020 to 5222.0312. Additionally, these parts provide interpretative guidance where the occupation is defined but the safe harbor criteria for that occupation are not all substantially met. Where some but not all of the safe harbor criteria are substantially met, those criteria which are substantially met shall be considered evidence of that status, and shall control where a conflicting result for that criterion is indicated by parts 5222.0330 to 5222.0340. Nothing contained in this chapter is intended to prevent or prohibit an insurer from seeking a reimbursement agreement from an insured where an insured disputes the insurer's underwriting or audit judgment on the application of this chapter for purposes of determining premium.

5222.0330 CONTROL OF METHOD AND MANNER OF PERFORMANCE.

Subpart 1. **Generally.** The most important factor in determining whether a person is an independent contractor is the degree of control which the purported employer exerts over the manner and method of performing the work contracted. The more control there is the more likely the person is an employee and not an independent contractor. Subparts 2 to 14 describe

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criteria for determining if there is control over the method of performing or executing services. The total circumstances, including the practices and the customs of the industry, must be considered to determine if control is present.

Subp. 2. **Authority over individual's assistants.** Control over the individual is indicated when the employing unit hires and pays the individual's assistants and supervises the details of the assistants' work.

Subp. 3. **Compliance with instructions.** Control is indicated when an individual is required to comply with detailed instructions about when, where, and how he or she is to work including the order or sequence in which the service is to be performed. Mere suggestions as to detail, or necessary and usual cooperation where the work furnished is part of a larger undertaking, does not normally evince control. Some individuals may work without receiving instructions because they are highly proficient in their line of work; nevertheless, the control is present if the employing unit has the right to instruct or direct the methods for doing the work and the results achieved. Instructions may be oral or may be in the form of manuals or written procedures which show how the desired result is to be accomplished. However, instructions required by state or federal law or regulation or general instructions passed on by the employing unit from a client or customer, do not evince control.

Subp. 4. **Oral or written reports.** Control is indicated if regular oral or written reports relating to the method in which the services are performed must be submitted to the employing unit. Periodic reports relating to the accomplishment of a specific result may not be indicative of control if, for example, the reports are used to establish entitlement to partial payment based upon percentage of completion of a job, or the reports are needed to determine compliance with the terms of a contract. Completion of receipts, invoices, and other forms customarily used in the particular type of business activity or required by law does not constitute written reports.

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Subp. 5. **Place of work.** Control is indicated if work which could be done elsewhere is done on the employing units premises, especially when the work could be done elsewhere. When work is done off the premises, freedom from control is indicated except in occupations where the services are necessarily performed away from the premises of the employing unit.

Subp. 6. **Personal performance.** Control is indicated if the services must be personally rendered to the employing unit. Personal performance of a very specialized work, when the worker is hired on the basis of professional reputation, as in the case of a consultant known in the academic and professional circles to be an authority in the field, is a less reliable indicator of control. Lack of control is indicated when an individual has the right to hire a substitute without the employing unit's knowledge or consent.

Subp. 7. **Existence of continuing relationship.** The existence of a continuing relationship between an individual and the person for whom he or she performs services indicates the existence of an employment relationship. Continuing services may include work performed at frequently recurring, though somewhat irregular intervals, either on call of the employing unit or whenever work is available.

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

Subp. 9. **Training.** Training of an individual by an experienced employee, by required attendance at meetings, and by other methods, indicates control, especially if the training is given periodically or at frequent intervals.

Subp. 10. **Amount of time.** Control is indicated where the worker must devote full time to the activity. Full time does not necessarily mean an eight-hour day or a five- or six-day week. Its meaning may vary with the intent of the parties, the

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nature of the occupation, and customs in the locality. Full-time services may be required even though not specified in writing or orally. For example, a person may be required to produce a minimum volume of business which compels the person to devote all working time to that business, or the person may not be permitted to work for anyone else.

Subp. 11. **Simultaneous contracts.** If an individual works for a number of persons or firms at the same time, lack of control is indicated.

Subp. 12. **Tools and materials.** The furnishing of tools, materials, and supplies by the employing unit indicates control over the worker. When the worker furnishes these items, lack of control is indicated. Lack of control is not indicated if the individual provides tools or supplies customarily furnished by workers in the trade.

Subp. 13. **Expense reimbursement.** Payment by the employing unit of either the worker's approved business or traveling expenses, or both, indicates control over the worker. A lack of control is indicated when the worker is paid on a job basis and is responsible for all incidental expenses.

Subp. 14. **Satisfying requirements of regulatory and licensing agencies.** Control is not indicated where an employing unit is required to enforce standards or restrictions imposed by regulatory or licensing agencies.

5222.0340 INDEPENDENT CONTRACTOR OR EMPLOYEE, FACTORS TO CONSIDER.

Subpart 1. **Factors.** Among the factors to be considered, in addition to factors of control, when determining if services are those of an independent contractor or employee are those listed in subparts 2 to 9.

Subp. 2. **Right to discharge.** The right to discharge exists if the individual may be terminated with little notice, without cause, or for failure to follow specified rules or methods. There is no right to discharge if an independent worker produces an end result which measures up to contract specifications. Contracts which provide for termination upon

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notice or for specified acts of nonperformance or default are not solely determinative of the right to discharge. Restrictions on the right to discharge because of a contract with a labor union or with other entities are not relevant for purposes of this subpart.

Subp. 3. **Availability to public.** If an individual makes services available to the general public on a continuing basis, independent contractor status is indicated. An individual's services are offered to the public by, among other things:

A. having an office and assistants;

B. displaying a sign in front of a place of business;

C. holding a business license;

D. having a listing in a business directory or a business listing in a telephone directory; or

E. advertising in a newspaper, trade journal, or magazine.

Subp. 4. **Compensation on job basis.** Independent contractor status is indicated by payment on a job basis rather than payment by the hour, week, or month. Payment on a job basis is customary where the worker is independent. Payment by the job may include a predetermined lump sum which is computed by the number of hours required to do the job at a fixed rate per hour or periodic partial payments based upon a percent of the total job price or the amount of the total job completed. The granting of a drawing account at stated intervals with no requirement for repayment of the excess drawn over commissions earned or the guarantee of a minimum salary indicates an employment relationship.

Subp. 5. **Realization of profit or loss.** Independent contractor status is indicated where an individual is in a position to realize a profit or suffer a loss as a result of his or her services. Opportunity for higher earnings from piecework or commissions does not indicate an opportunity for profit or loss. An opportunity for profit or loss is indicated by the following factors, among others:

A. hire, direct, and pay assistants;

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B. provide own office, equipment, materials, or other facilities for doing the work;

C. continuing and recurring financial liabilities or obligations, relating to the work;

D. profit or loss in the work depends upon the relationship of receipts to expenditures;

E. expenses incurred in connection with the work are paid by the individual;

F. specific jobs are performed for prices agreed upon in advance; and

G. performance of the services affects the individual's business reputation, and not the business reputation of those who purchase the services.

Subp. 6. **Termination.** The worker's right to terminate the working relationship with the purported employer at will and without incurring liability for noncompletion indicates employment. A requirement to provide notice of termination for some period in advance of the termination is not relevant for purposes of this subpart. Independent contractor status is indicated where the individual agrees to complete a specific job, is responsible for its satisfactory completion, and is liable for failure to complete the job.

Subp. 7. **Substantial investment.** A substantial investment by a person in facilities used in performing services for another indicates an independent contractor status. The furnishing of all necessary facilities by the employing unit indicates the absence of an independent contractor status. Facilities include equipment or premises necessary for the work, but not tools, instruments, clothing, and similar items that are provided by individuals working in employment as a common practice in their particular trade. Substantial investment means a monetary investment representing something of considerable worth, in relation to the overall requirements of the person's chosen profession, trade, occupation, or vocation. A substantial expenditure of time or money for an individual's education is not indicative of an independent contractor status.

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Subp. 8. **Responsibility.** If an employing unit is responsible for the negligence, personal behavior, and work actions of an individual in contacts with customers and the general public during times that services are performed for the employing unit, an employment relationship is indicated.

Subp. 9. **Services fundamental to business.** Employment is indicated where the services provided are necessary to the fundamental business purpose for which the organization exists.

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OFFICE OF THE REVISOR OF STATUTES

Proposed Rule

RD867

Agency: Department of Labor and Industry

Division:

Agency Contact: Joan Volz

Minnesota Rules: Parts 5222.0010 to 5222.0340

Title: Proposed Rules Relating to Workers' Compensation; Independent Contractor

Type of Rules: Permanent

Incorporations by Reference: None

Steven C. Cross
Revisor of Statutes

John C. Fuller
Assistant Deputy Revisor
Phone: 296-0955
Date: November 27, 1985

STATE OF MINNESOTA
DEPARTMENT OF LABOR AND INDUSTRY
WORKERS' COMPENSATION DIVISION

In the matter of the Proposed Adoption by the Minnesota Department of Labor and Industry, Workers' Compensation Division, of Rules Governing Independent Contractors.

ORDER ADOPTING RULES WITHOUT A PUBLIC HEARING

Notice of intent to adopt the above-captioned rules without a public hearing was published in the State Register on December 23, 1985, and was sent by United States mail to all persons and groups on the list maintained by the Department of Labor and Industry, Workers' Compensation Division, pursuant to Minn. Stat. § 14.22 (1984) on December 19, 1985. After affording interested persons and groups an opportunity to submit comments and requests for a hearing for 30 days after notice, receiving fewer than 25 written requests for a public hearing within the 30-day comment period, reviewing and considering the comments, and determining the need for and reasonableness of the above-captioned rules.

NOW, THEREFORE, IT IS ORDERED that the Rules Governing Independent Contractors are adopted pursuant to the authority vested in me by Minn. Stat. §§ 176.041, subd. 1 and 176.83, subd. 11.

STATE OF MINNESOTA

Steve Keefe

Steve Keefe, Commissioner
Department of Labor and Industry

Dated: 1-30-86

STATE OF MINNESOTA
DEPARTMENT OF LABOR AND INDUSTRY
WORKERS' COMPENSATION DIVISION

In the Matter of the Proposed Adoption by the Minnesota Department of Labor and Industry, Workers' Compensation Division, of Rules Governing Independent Contractors

ORDER FOR PUBLICATION AND FOR NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

IT IS ORDERED THIS 9th day of December, 1985, that a Notice of Intent to Adopt Rules Without a Public Hearing in the above-captioned matter be published in the State Register and be given to all persons and groups who have requested that their names be placed on the list maintained by the Minnesota Department of Labor and Industry for that purpose pursuant to Minn. Stat. § 14.22 (1984).

STATE OF MINNESOTA

Steve Keefe

Steve Keefe, Commissioner
Department of Labor and Industry

STATE OF MINNESOTA
DEPARTMENT OF LABOR AND INDUSTRY
WORKERS' COMPENSATION DIVISION

In the Matter of the Proposed Adoption by the Minnesota Department of Labor and Industry, Workers' Compensation Division, of Rules Governing Independent Contractors

NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

Notice is hereby given that the Department of Labor and Industry, Workers' Compensation Division, proposes to adopt the above-captioned rules without a public hearing. The Department has elected to follow the noncontroversial procedures set forth in Minn. Stat. §§ 14.21 - 14.28 (1984).

Persons or groups interested in these rules shall have 30 days to submit comments on the proposed rules. Comments in support of or in opposition to the proposed rules are encouraged. Each comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed. The proposed rules may be modified if the modifications are supported by the data and views submitted to the Department and do not result in a substantial change in the proposed language.

A public hearing will be held if 25 or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period. If a public hearing is required, the Department will proceed according to the provisions of Minn. Stat. §§ 14.131 - 14.20 (1984). Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rules addressed, the reason for the request, and any change proposed.

Comments or written requests for a public hearing should be submitted to:

Steve Keefe
Commissioner, Department of Labor and Industry
5th Floor, Space Center Bldg.
444 Lafayette Road
St. Paul, Minnesota 55101
(612) 296-2342

Authority for the adoption of these rules is contained in Minn. Stat. §§ 176.041, subd. 1 and 176.83, subd. 11 (1984). A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules, identifies the data and information relied upon to support the proposed rules and assesses the impact of the proposed rules on small businesses and on local public bodies has been prepared and is available from the Commissioner upon request at the above address.

The proposed rules will affect small businesses. The rules will enable small businesses to determine whether individuals providing personal services to them are employees, for whom workers' compensation coverage is required, or independent contractors, for whom coverage is not required. The rules place no additional financial burdens on small businesses as the purchase of workers' compensation coverage for employees is already required by law.

Upon adoption of the final rules without a public hearing, all jurisdictional documents, the Statement of Need and Reasonableness, all written comments and requests for hearing received, and the final rules as adopted, will be delivered to the Attorney General. The rules will then be reviewed by the Attorney General as to legality and form as it relates to legality, including the issues of substantial change, the agency's authority to adopt the rules and the existence of a rational basis for the need for and reasonableness of the proposed rules. Persons who wish to be notified of the submission of this material to the Attorney General, including modifications to the rules as originally proposed, or who wish to receive a free copy of the final rules as adopted, should submit a written request to the Commissioner at the above address.

The text of the proposed rules follows this notice in the State Register. The rules establish criteria for determining whether an individual is an independent contractor for purposes of workers' compensation coverage.

One free copy of the proposed rules may be obtained by contacting Carla Mitrovich at the above address or by calling (612) 296-2342.

STATE OF MINNESOTA

Steve Keefe

Steve Keefe
Commissioner, Department of
Labor and Industry

Dated: December 9, 1985.

STATE OF MINNESOTA
DEPARTMENT OF LABOR AND INDUSTRY
WORKERS' COMPENSATION DIVISION

In the Matter of the Proposed Adoption by the Minnesota Department of Labor and Industry, Workers' Compensation Division, of Rules Governing Independent Contractors

AFFIDAVIT OF MAILING

STATE OF MINNESOTA)
) ss
COUNTY OF RAMSEY)

Carla R. Mitrovich, being first duly sworn, deposes and says:

That on the 19TH day of December, 1985, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Intent to Adopt Rules Without a Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, on all persons and groups who have requested that their names be placed on the list maintained by the Minnesota Department of Labor and Industry, Workers' Compensation Division, for the purpose of receiving notice of the proposed adoption of rules by this Department.

Carla R. Mitrovich

Subscribed and sworn to before me this 20 day of December, 1985.

Rosemary L. LaRue

ROSEMARY L. LARUE
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES NOVEMBER 11, 1990

STATE OF MINNESOTA
DEPARTMENT OF LABOR AND INDUSTRY
WORKERS' COMPENSATION DIVISION

In the Matter of the Proposed Adoption by the Minnesota Department of Labor and Industry, Workers' Compensation Division, to Rules Governing Independent Contractors

CERTIFICATE

STATE OF MINNESOTA)
) ss
COUNTY OF RAMSEY)

I hereby certify that the list of interested persons and groups who have requested, pursuant to Minn. Stat. § 14.22 (1984), that their names be placed on the list maintained by the Minnesota Department of Labor and Industry for the purpose of receiving notice of the proposed adoption of rules by this Department is accurate and complete as of 8:00 a.m. this 19TH day of December, 1985.

CARLA R. MITROVICH

PROPOSED RULES

Pursuant to Minn. Stat. of 1982, §§ 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless 25 or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules; and
4. that the rule may be modified if the modifications are supported by the data and views submitted.

If, during the 30-day comment period, 25 or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

Pursuant to Minn. Stat. §§ 14.29 and 14.30, agencies may propose emergency rules under certain circumstances. Proposed emergency rules are published in the *State Register* and, for at least 25 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Labor and Industry

Proposed Rules Relating to Workers' Compensation; Independent Contractor

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Department of Labor and Industry, Workers' Compensation Division, proposes to adopt the above-captioned rules without a public hearing. The Department has elected to follow the noncontroversial procedures set forth in Minn. Stat. §§ 14.21-14.28 (1984).

Persons or groups interested in these rules shall have 30 days to submit comments on the proposed rules. Comments in support of or in opposition to the proposed rules are encouraged. Each comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed. The proposed rules may be modified if the modifications are supported by the data and views submitted to the Department and do not result in a substantial change in the proposed language.

A public hearing will be held if 25 or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period. If a public hearing is required, the Department will proceed according to the provisions of Minn. Stat. §§ 14.131-14.20 (1984). Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rules addressed, the reason for the request, and any change proposed.

Comments or written requests for a public hearing should be submitted to:

Steve Keefe
Commissioner, Department of Labor and Industry
5th Floor, Space Center Bldg.
444 Lafayette Road
St. Paul, Minnesota 55101
(612) 296-2342

Authority for the adoption of these rules is contained in Minn. Stat. §§ 176.041, subd. 1 and 176.83, subd. 11 (1984). A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules, identifies the data and information relied upon to support the proposed rules and assesses the impact of the proposed rules on small businesses and on local public bodies has been prepared and is available from the Commissioner upon request at the above address.

The proposed rules will affect small businesses. The rules will enable small businesses to determine whether individuals providing personal services to them are employees, for whom workers' compensation coverage is required, or independent contractors, for whom coverage is not required. The rules place no additional financial burdens on small businesses as the purchase of workers' compensation coverage for employees is already required by law.

Upon adoption of the final rules without a public hearing, all jurisdictional documents, the Statement of Need and Reasonableness, all written comments and requests for hearing received, and the final rules as adopted, will be delivered to the Attorney General. The rules will then be reviewed by the Attorney General as to legality and form as it relates to legality, including the issues of substantial change, the agency's authority to adopt the rules and the existence of a rational basis for the need for and reasonableness of the proposed rules. Persons who wish to be notified of the submission of this material to the Attorney General, including modifications to the rules as originally proposed, or who wish to receive a free copy of the final rules as adopted, should submit a written request to the Commissioner at the above address.

The text of the proposed rules follows this notice in the *State Register*. The rules establish criteria for determining whether an individual is an independent contractor for purposes of workers' compensation coverage.

One free copy of the proposed rules may be obtained by contacting Carla Mitrovich at the above address or by calling (612) 296-2342.

December 9, 1985

Steve Keefe
Commissioner; Department of Labor and Industry

Rules as Proposed (all new material)

INDEPENDENT CONTRACTOR

5222.0010 PURPOSE.

The purpose of this chapter is to establish standards for distinguishing between an employee and an independent contractor for purposes of workers' compensation coverage under Minnesota Statutes, section 176.012, paragraph (e). For those occupations specifically discussed in parts 5222.0020 to 5222.0312, this chapter establishes a "safe harbor" for assuring either independent contractor or employee status in those occupations. Where a worker is within the scope of the definition of a part, but does not meet the safe harbor criteria for either independent contractor or employee status, the determination shall be made as described in part 5222.0320.

"Employee" as used in this chapter means a worker who is not an independent contractor. The employee safe harbor criteria are not intended to define "employee" under Minnesota Statutes, section 176.011, subdivision 9 for any purpose other than distinguishing workers who are not independent contractors.

5222.0020 ARTISANS.

Subpart 1. **Definition.** An artisan is a person who has been trained in a mechanical art or trade. The particular skill necessary in the work is acquired by attending a vocational school, serving an apprenticeship, or by working as a handyman or helper and learning the trade informally.

Artisans include bricklayers, blocklayers, cable installers, carpenters, electricians, roofers, siders, painters, plasterers, paperhangers, tapers, joiners, plumbers, and steamfitters.

Subp. 2. **Independent contractor.** An artisan is an independent contractor and not an employee if all of the following criteria are substantially met.

A. The artisan is responsible for the final result, is free to choose the means and methods for accomplishing the result, and is not required to conform to fixed hours.

B. The artisan is free to select others to assist in performing the job.

C. The artisan has the opportunity of making a profit or suffering a loss and is not guaranteed a minimum income.

D. The artisan has business expenses beyond the furnishing of tools, such as scaffolding, ladders, trucks, equipment, and advertising.

E. The artisan has a substantial investment in facilities or equipment.

F. The artisan holds himself or herself out to the public as being available to perform services for others.

G. Payment for the work is on a job basis for a complete job rather than a time basis.

H. The artisan agrees to provide lien waivers upon completion of the job.

Subp. 3. **Employee.** An artisan is an employee if all of the following criteria are substantially met.

A. The artisan is hired to do the work personally and any helpers are hired, paid, and subject to control by the purchaser of the artisan's services.

B. Work is during fixed hours established by the purchaser and on a full-time basis.

C. The artisan is paid on an hourly, weekly, or similar rate that is independent of the amount of work completed.

D. The artisan has no substantial investment in facilities or equipment for doing the work.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

E. Materials and equipment other than hand tools are supplied by the purchaser of the artisan's services.

F. The artisan will not incur a loss or realize a profit by exercising independent judgment in hiring helpers, selecting the materials used, determining methods of work, or similar matters.

G. If the artisan does not complete the job, the artisan is not responsible for damages for noncompletion or for obtaining a replacement to complete the job.

5222.0030 BARBERS.

Subpart 1. **Definition.** Barbers are persons registered to practice barbering pursuant to Minnesota Statutes, chapter 154. A registered barber's apprentice is not an independent contractor.

Subp. 2. **Independent contractor.** A barber is an independent contractor if all of the following criteria are substantially met.

A. The barber rents a barber chair from the purported employer for a flat sum per week, month, or similar time basis.

B. All payments by customers for services are retained by the barber.

C. The barber furnishes his or her own tools, but need not furnish linens or supplies.

D. The purported employer does not have the right to control the means and manner of the barber's performance of services such as haircuts, shaves, shampoos, scalp treatments, and facial massages.

E. A written agreement between the parties provides that the barber is an independent contractor.

Subp. 3. **Employee.** A barber is an employee if all of the following criteria are substantially met.

A. The barber is paid on a salary basis, though tips may be retained by the barber, or the employer retains a set percentage of the money taken in by the barber's services, excluding tips.

B. The employer furnishes equipment and supplies other than razors, combs, scissors, and similar items.

C. The employer furnishes uniforms if uniforms unique to the employer are required.

D. The barber does not advertise.

E. The employer may terminate the barber's employment for noncompliance with rules including hours of work, smoking, or wasting time.

F. A written employment agreement states that the parties are not independent contractors.

G. The employer has the right to control the means and manner by which the barber performs services such as haircuts, shaves, shampoos, scalp treatments, and facial massages.

Subp. 4. **Factors excluded.** The fact that barber associations or unions fix hours of work or other conditions of business operation indicates neither employment nor independent contractor status. Rules prescribed with respect to sanitary conditions by the state or city health departments are not to be considered in determining independent contractor or employment status.

5222.0040 BOOKKEEPERS AND ACCOUNTANTS.

Subpart 1. **Definition.** A bookkeeper is an individual whose work consists substantially of some or all of the following: recording items in proper journals and on special forms, posting ledgers, balancing books, compiling reports, and otherwise keeping a complete and systematic set of records of an organization's business transactions. Accountants licensed under Minnesota Statutes, chapter 326 are bookkeepers for the purposes of this part.

Subp. 2. **Independent contractor.** A bookkeeper is an independent contractor if all of the following criteria are substantially met.

A. The bookkeeper rents an office or maintains one in the home.

B. The bookkeeper makes his or her services available to the public.

C. The bookkeeper's services are rendered for a number of clients and are compensated for on a fee basis.

D. The bookkeeper pays his or her own business expenses, which include the cost of equipment, materials, and helper's wages.

E. The bookkeeper is hired to accomplish a specific result and is not subject to direction or control over the methods or means of accomplishing it.

F. The bookkeeper's services are not performed on the premises of the purchaser of the services.

Subp. 3. **Employee.** A bookkeeper is an employee if all of the following criteria are substantially met.

A. The bookkeeper performs services at regular intervals for a single business concern for a fixed salary.

B. The bookkeeper works on the employer's premises with the necessary supplies and office help furnished.

C. The bookkeeper does not make his or her services available to the public, and does not maintain an office of his or her own.

D. The bookkeeper works during fixed hours and enjoys the usual privileges extended by an employer to employees including paid vacations, sick benefits, or bonuses.

E. The bookkeeper's services are in connection with a system of bookkeeping or accounting adopted by the employer.

F. The bookkeeper is subject to direction and control of the employer, although he or she may not be closely supervised because of the skill required to do the work.

5222.0050 BULK OIL PLANT OPERATORS.

Subpart 1. **Definition.** A bulk plant operator is an individual who:

A. distributes the products of firms engaged in the oil business;

B. receives the oil products from the firm with which he or she contracts and delivers them to the retailers in his or her territory; and

C. collects money for the products from customers and forwards it to the firm.

Subp. 2. **Independent contractor.** A bulk oil plant operator is an independent contractor if all of the following criteria are substantially met.

A. The operator is in complete charge of the entire plant.

B. The operator's contract with an oil firm provides that the operator will:

(1) sell the firm's petroleum products on a consignment basis and account for all money collected;

(2) sell the products within a general territory at prices set by the firm;

(3) bear all expenses except freight on the products consigned;

(4) furnish trucks and other equipment; and

(5) hire, pay, and assume full responsibility for all necessary assistants.

C. The operator advertises the firms' products at his or her own expense.

D. The operator fixes the hours and days the plant remains open, and hires, pays, and controls the employees.

Subp. 3. **Employee.** A bulk oil plant operator is an employee if all of the following criteria are substantially met.

A. The operator does not have an investment in capital assets and is paid on a salary basis.

B. The operator is required to work fixed hours or full time.

C. The operator is included in the oil firm's employee benefits plans.

D. The operator is required to comply with instructions given by the firm.

E. The operator is not personally obligated to pay wages or does not assist in paying the truck or plant maintenance expenses.

F. The operator is hired to manage the plant on a salary basis under instructions on the method and manner of doing the work.

5222.0060 COLLECTORS.

Subpart 1. **Definition.** A collector is an individual who collects, accepts, or encourages payments from the customers of a business for merchandise sold or services rendered by that business.

Subp. 2. **Independent contractor.** A collector is an independent contractor when the criteria of item A or B is substantially met.

A. If the collector is a door-to-door or telephone collector, he or she:

(1) is assigned a specific territory and furnished lists of people from whom to collect;

(2) is not required to conform to fixed hours, devote any particular amount of time to the business, or produce a minimum volume of collections;

(3) is required to cover the territory regularly, but works out a schedule of contacts;

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(4) reports to the office only to turn in collections and to get new lists;

(5) receives a fixed percentage of the collections made, out of which are paid all expenses connected with the work;

(6) is not guaranteed a minimum income; and

(7) is free to engage in other employment, including collecting accounts for other firms.

B. The collector accepts payment of bills from the customers of a third party on the collector's premises and:

(1) bills can be paid at any and all times the collector's premises is open for business;

(2) the collector is not required to be present if someone is on the premises to receive payments;

(3) the collector is not required to conform to fixed hours, or to devote any particular amount of time to the third party's business, or to give preference to the third party's customers;

(4) the collector deposits all money collected in a bank and periodically forwards to the third party copies of bank deposit receipts, and complaint forms from customers;

(5) the third party furnishes the collector with the necessary business forms, postage, and stationery;

(6) the collector is required to purchase a surety bond;

(7) the third party pays a salary for the collection services or the collector may receive a percentage of the money collected;

(8) the collector is not trained in the work or required to follow prescribed routines; and

(9) the collector is free to conduct private business activities in addition to the collection services.

Subp. 3. **Employee.** A collector is an employee if all of the following are substantially met.

A. The services of the collector are retained to further the employer's business.

B. The collector is required to perform services pursuant to schedules established by the employer.

C. The employer has first call on the collector's time and efforts.

D. The collector has no significant business expenses or investment in the business.

E. The collector is paid on a commission or salary basis.

F. The employer has the right to establish the means and methods used in collecting.

G. The employer has the right to interfere with or set the order of the services.

H. The collector must report at the firm's office regularly for conferences, training, or instructions.

I. The hiring of helpers or substitutes is not permitted.

J. The grounds for termination are not limited to failure to meet production quotas.

5222.0070 CONSULTANTS.

Subpart 1. **Definition.** A consultant is one who confers with and advises people on matters within the particular field in which he or she specializes. The consultant has developed a peculiar knowledge or special skill of a professional or semiprofessional nature through extensive training and education or through wide experience in a particular occupation.

Subp. 2. **Independent contractor.** A consultant is an independent contractor if all of the following criteria are substantially met.

A. The consultant rents an office or offices at home.

B. The consultant advertises in newspapers or trade journals, or maintains business listings, or otherwise holds himself or herself out to the public as being available for a particular type of service.

C. The consultant is free to hire clerical help and assistants.

D. The consultant's success in the business world is dependent entirely on personal efforts and the demand by the public for the services.

E. The consultant operates under an arrangement where for a set fee technical advice or assistance is given.

F. The consultant's contract of service is for a specified period of time or specific purpose.

G. The consultant is free to work for others at the same time.

H. The consultant is not required to observe regular hours of work either at the firm's offices or at home.

I. The consultant agrees only to be available for conferences and consultations at the request of the firm or, as in some cases, to perform services on a specified minimum number of days.

J. The consultant makes no regular reports and is not required to attend regular conferences with members of the firm.

K. The consultant is not subject to control or supervision, but is given a free hand in doing work.

L. The consultant is employed to do a specific job and those who employ the consultant are interested only in the result accomplished and not in the manner and means of accomplishing it.

Subp. 3. **Employee.** A consultant is an employee when all the following criteria are substantially met.

A. The consultant is retained for services which further the employer's business.

B. The consultant is required to perform services personally.

C. The consultant's services are not available to the public.

D. The consultant has no investment or business expense.

E. The consultant provides recurring, rather than sporadic or infrequent, services.

F. The employer has the right of first call on the services of the consultant.

G. The consultant is required to report on the progress of assignments.

H. Either party has the right to end the relationship at any time.

I. The consultant receives a fixed salary determined on a weekly, monthly, annual, or similar basis.

J. The consultant cannot realize a profit or loss from the services.

5222.0080 DOMESTIC SERVICE.

Subpart 1. **Definition.** Domestic service means household services such as housecleaning, meal preparation, or invalid companionship or care.

Subp. 2. **Independent contractor.** A person providing domestic services is an independent contractor if all of the following criteria are substantially met.

A. The service is performed in connection with some episode in the life of the purported employer's family, such as an illness of short duration, preparation for a wedding, the birth of a child, or other episode of limited duration that indicates an engagement to accomplish a specific job.

B. The domestic is free to work for others.

C. The domestic may hire helpers to complete the job.

D. The domestic is paid on a job basis rather than an hourly basis.

Subp. 3. **Employee.** A person providing domestic services is an employee if all of the following factors are substantially met.

A. The parties are not members of the same household or immediate family.

B. The services are performed regularly and over a considerable period of time.

C. The domestic received at least $500 as wages from the employer for any three-month period during the preceding 12 months. This factor is alone sufficient to establish the employment relationship under Minnesota Statutes, section 176.041, subdivision 1.

D. The domestic is not claimed as a dependent for income tax purposes.

E. The domestic is paid on an hourly, weekly, or similar time basis.

F. The domestic does not contribute to the employer's household expenses.

5222.0090 BABYSITTERS.

Subpart 1. **Definition.** Babysitters are individuals who provide childcare services to parents and are not licensed to operate day care centers under Minnesota Statutes, chapter 245. Subparts 2 and 3 are applicable only if the threshold requirements of Minnesota Statutes, section 176.041, subdivision 1, have been met.

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Subp. 2. **Independent contractor.** A babysitter is an independent contractor if all of the following criteria are substantially met.

A. The babysitter takes care of another's child in the babysitter's own home or other premises under the babysitter's control.

B. The instructions given to the babysitter by the parents are general in nature, relating to matters of diet, health, rest, special foods to be given to the child, and who to contact in an emergency.

C. The babysitter is allowed to exercise judgment on matters as to the amount of time and attention the child requires, the types of meals to serve, and the manner of coping with situations which may arise.

D. The babysitter is free to perform household chores when the child does not require personal attention.

Subp. 3. **Employee.** A babysitter is an employee if all of the following criteria are substantially met.

A. The babysitter performs childcare services in the home of the child's parents.

B. The babysitter has been engaged to devote services exclusively to the performance of the employer's work.

C. The babysitter is given instructions regarding such matters as the amount of time and attention the child requires, the types of meals to serve, and the manner of coping with situations that may arise.

Subp. 4. **Babysitter services contracted through agencies.** A babysitter is an employee of an agency in the business of supplying names of babysitters if all of the following criteria are substantially met.

A. The agency maintains a register of names and addresses of individuals whom the agency determines are qualified to perform babysitter services. The agency advertises and otherwise holds itself out to the public as being engaged in the business of furnishing a babysitter service.

B. The agency fixes the fee to be charged for the services and notifies the babysitter where to report and the hours to be worked.

C. The babysitter pays the agency a specified amount or a percentage of the wages. Appearance and the performance of services must be guided by standards and rules issued by the agency.

D. The babysitter must notify the agency when not available for an assignment and usually agrees to restrict work to that furnished by the agency.

E. Any complaints as to the quality of the services are made by the parents to the agency, and the agency may remove the babysitter's name from its register.

5222.0100 INDUSTRIAL HOMEWORKERS.

Subpart 1. **Definition.** Industrial homeworkers are persons who work in their own homes or workshops on the manufacture or assembly of articles from materials supplied by the purchaser of their services. Services provided by industrial homeworkers include typing of envelopes and the manufacture, alteration, or finishing of gloves, slippers, bedspreads, slipcovers, pottery, boxes, toys, or similar items.

Subp. 2. **Independent contractor.** An industrial homeworker is an independent contractor when all the following criteria are substantially met.

A. The homeworker works under agreements that only require the completion of assignments according to specifications and within designated times.

B. The homeworker is furnished materials by the firm and, in accordance with a pattern or general instructions, turns out a finished product which measures up to the firm's standards.

C. The completed products are paid for on a piecework basis.

D. There is no requirement that the homeworker give preference to the firm's work, although the homeworker is expected to complete assignments within a specified time.

E. The homeworker may work for others; however, in many cases, the amount of work furnished by one firm keeps the worker busy full time.

F. Unsatisfactory work is done over without pay.

G. Set hours of work are not prescribed by the firm, nor is the work supervised.

Subp. 3. **Employee.** A homeworker is an employee if all of the following criteria are substantially met.

A. The services of the homeworker are closely integrated into the business of the firm that employs the worker.

B. The homeworker is subject to virtually the same set of controls as employees who work on the firm's premises.

C. The homeworker uses his or her own small hand tools, but large tools or heavy equipment is furnished by the firm.

D. The homeworker works or is paid on an hourly basis and renders personal services of a recurring nature.

E. The homeworker is given detailed instructions or training in the work and is required to change the work plans and the order of services when requested.

F. Although there is usually no direct supervision over the services, the firm checks the finished product and has the right to change or direct the method of operation if the completed article is not satisfactory.

G. The homeworker is required to report on progress periodically.

H. The relationship is terminable by either party, with or without cause prior to completion of a project without incurring liability for damages for noncompletion.

I. The employer may change the homeworker's work assignment.

5222.0110 LABORERS.

Subpart 1. **Definition.** Laborers are people whose work usually requires strength rather than skill, such as laborers, char-women, coal hustlers, gardeners, yard maintenance workers, landscaping and planting workers, tree trimmers, handy men, janitors, odd-job men, porters, window washers, and other unskilled workers.

Subp. 2. **Independent contractor.** The laborer is an independent contractor if all of the following criteria are substantially met.

A. The laborer generally must use business judgment to earn a livelihood. The laborer's success or failure depends on how assistants are managed, the protection of investment through proper care of tools and equipment, and the reputation established as a result of methods of doing business.

B. The services need not be performed personally.

C. The laborer holds himself or herself out to the public as available for furnishing a certain type of service on a job basis.

D. The laborer is free to hire assistants and the assistants are the laborer's own responsibility, that is, the laborer directs them, pays them, and is liable for the payment of taxes on their wages.

E. The laborer furnishes tools.

F. The laborer obtains work by recommendation, advertising in newspapers, or maintaining a business listing in a telephone or service directory.

G. The laborer is responsible only for completion of the job within a certain time and is free to use personal methods and means for doing the work.

H. The laborer agrees to provide lien waivers upon completion of the job.

Subp. 3. **Employee.** A laborer is an employee if all of the following criteria are substantially met.

A. The services must be performed personally.

B. The laborer works on employer premises or at locations assigned by the employer, at specified times, and with tools and facilities furnished by the employer. The services may be provided on a permanent, recurring, or itinerant basis.

C. Pay is computed on a time rather than a lump-sum basis.

D. The employer has the right to stop the laborer on one job and start on another, to speed up or slow down the worker, and to express dissatisfaction with the work and to have it redone.

E. The laborer is not responsible for damages for noncompletion of the work. If the laborer quits prior to completing the job, the laborer is not responsible for finding a replacement.

5222.0120 MUSICIANS; GENERAL.

The status of musicians or groups in parts 5222.0120 to 5222.0140 is not affected by the fact that an American Federation of Musicians Form B Contract, to which the leader is a party, purports to make the purchaser their employer. The actual relationship, rather than the terms of the contract, controls.

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5222.0130 MUSICIANS; COOPERATIVE ORCHESTRAS.

Subpart 1. **Definition.** A cooperative orchestra is a musical group operated on a cooperative or partnership basis. All of the members have a voice in determining the membership, the engagements to be accepted, the division of the money received, and all other phases of the orchestra's operations. By common consent of the members one of the group may be designated as a leader whose duties are to act as spokesperson for the group and to negotiate engagements in the orchestra's name. A business manager or set manager or other nonplaying member may be a member of a cooperative orchestra.

Subp. 2. **Independent contractor.** All the members, including the leader, of an orchestra are independent contractors if all of the following criteria are met.

A. Payment is not on an hourly basis. Proceeds from engagements are used to pay expenses and the remainder is distributed as determined by members.

B. The group is free to work for other purchasers of its services.

C. The purchaser does not have the right to discharge a member of the group, or to dictate the style or manner of playing the music.

D. The group may be liable for damages for nonperformance if it quits prior to completing its engagement with a purchaser.

Subp. 3. **Employee.** Members of a cooperative orchestra are employees if all the following criteria are substantially met.

A. The individuality of the orchestra is subordinated to the enhancement of the purchaser's reputation.

B. The work relationship is not short term but is of a continuing nature.

C. The purchaser has the right to discharge the leader or any of the orchestra members, to change the style or type of music, to have first call on the services, and to restrict the orchestra's outside activities.

D. The purchaser pays the members on an hourly or time basis and bears the expenses of the orchestra.

5222.0140 MUSICIAN; ORCHESTRA LEADER.

Subpart 1. **Definition.** An orchestra leader or union contractor is the assembler or leader of a musical group that plays music in public for compensation.

Subp. 2. **Independent contractor.** An orchestra leader is an independent contractor if all of the following conditions are substantially met.

A. The leader selects the members and rehearses and directs them.

B. The leader holds out to the public as being able to furnish a musical organization and enter into contracts to furnish music.

C. The leader has the primary right to control the orchestra members as to how, when, and where they work.

D. The leader is charged with all expenses the orchestra incurs, and, after paying expenses and the salaries or hourly wages of the other members, suffers a loss or realizes a profit from the undertaking.

E. The leader is paid a lump sum for an engagement.

F. The purchaser of the music deals directly with the leader.

G. The purchaser retains only such control over the leader as to ensure the attainment of the desired result, such as the privilege of making suggestions on the type or style of music and number of musicians wanted.

Subp. 3. **Subcontractor.** Where the leader is an independent contractor, the purchaser of music is responsible for the workers' compensation coverage of group members other than the leader under Minnesota Statutes, section 176.205, unless those members are independent contractors with respect to the leader or the purchaser.

Subp. 4. **Employee.** The orchestra leader or assembler and members of the musical group are employees of the purchaser of musical services if all of the following criteria are substantially met.

A. The purchaser hires a musician (usually called a union contractor) to assemble an orchestra to play at the purchaser's establishment. The purchaser specifies the number of musicians, the type of instruments, and the price per musician.

B. The assembler of the group may be the orchestra leader if the purchaser designates him or her as the leader.

C. The purchaser may accept all the musicians who have been assembled or make changes in the personnel with or without an audition.

D. The purchaser pays for the services on an hourly basis and is responsible for the business expenses of the group.

5222.0150 OUTSIDE COMMISSION SALESPEOPLE OR MANUFACTURER'S REPRESENTATIVES; GENERAL.

The following factors, taken together, are not sufficient to establish an employment relationship for an outside commission

salesperson or manufacturer's representative under parts 5222.0160 to 5222.00180 territorial restrictions, fixing of sales prices and terms by the companies, the furnishing of leads, working off premises of the employer, and requirements that the salesmen investigate customers' complaints, collect delinquent accounts, and refrain from selling for competitors.

5222.0160 TRAVELING SALESPEOPLE.

Subpart 1. **Definition.** A traveling salesperson is associated with a manufacturer or distributor whose products the salesperson sells directly to wholesalers or retailers. The salesperson is assigned to territories and furnished with price lists and samples or descriptions of the merchandise to be sold. The salesperson is required to sell the merchandise at prices set by the firm and the firm reserves the right to accept or reject orders. The firm fills the orders by shipping directly to the customers and billing the customers directly. The salesperson receives compensation from the firm in the form of a percentage of the price the customers pay for the merchandise. The salesperson may be required to work full time, to not work for competitors, or to produce a certain amount of business regularly.

Subp. 2. **Independent contractor.** A traveling salesperson is an independent contractor if all the following conditions are substantially met.

A. The salesperson is free to solicit when, where, and how he or she pleases.

B. The salesperson chooses working hours and schedule of calls.

C. The salesperson chooses his or her own means of travel and is responsible for the costs of travel.

D. The salesperson pays his or her own expenses.

Subp. 3. **Employee.** A traveling salesperson is an employee if all the following conditions are substantially met.

A. The salesperson is required to appear at or report to the firm's offices regularly.

B. The salesperson must work during fixed hours or at certain times.

C. The salesperson must follow and report on leads.

D. The salesperson is required to take part in sales meetings or training courses.

E. The salesperson is required to canvass territory at regular intervals.

F. The firm is dependent principally on the services of traveling salespersons for the disposition of its merchandise.

5222.0170 HOUSE-TO-HOUSE COMMISSION SALESPEOPLE.

Subpart 1. **Definition.** A house-to-house commission salesperson sells door-to-door at retail prices to the customer. The salesperson does not purchase stock at wholesale, maintain that stock for resale, or retain the risk of loss if the stock is not sold.

Subp. 2. **Independent contractor.** A house-to-house commission salesperson is an independent contractor if all of the following criteria are substantially met.

A. If assigned to territories, the salesperson is not granted exclusive rights to them.

B. The salesperson is not required to canvass his or her territories within any specified time or to work during fixed hours or at certain times.

C. The salesperson receives no training, is not required to follow an established routine or schedule, and devises his or her own methods and means of selling.

D. The salesperson pays his or her own business expenses.

E. The salesperson is not required to produce any minimum volume of business or follow leads furnished by the company.

Subp. 3. **Employee.** A house-to-house commission salesperson is an employee if all of the following criteria are substantially met.

A. The salesperson works for only one company and on a full-time basis.

B. The services of the salesperson are an important part of the company's business.

C. Although the salesperson may not be required to report to the company's office at regular intervals, he or she often receives leads and instructions through the mail which must be followed.

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D. The salesperson is required to file regularly a report of activities with the company.

E. The salesperson is required to canvass his or her territory regularly.

F. The salesperson is required to attend sales meetings or take part in training courses.

G. The salesperson may be visited by a sales manager or supervisor who instructs and helps in developing sales techniques and other matters.

H. The salesperson is expected to produce a certain amount of business to continue the relationship.

5222.0180 HOUSE-TO-HOUSE DEALER SALESPEOPLE.

Subpart 1. **Definition.** A house-to-house dealer salesperson buys stocks of commodities at wholesale from a company and sells them at retail. In other respects, the dealer is similar to ordinary retail merchants and house-to-house commission salespeople.

Subp. 2. **Independent contractor.** A dealer is an independent contractor if all of the following criteria are substantially met.

A. The dealer is not required to work during fixed hours or at certain times, to follow any particular routes or schedules or to report on his or her activities.

B. The dealer keeps substantial inventories and has automobiles or trucks to deliver merchandise.

C. The dealer may employ others.

D. Compliance with suggestions or attendance at salesmanship meetings are optional with the dealers.

E. The dealer is not required to solicit prospective purchasers identified by the company.

F. The dealer chooses working hours and methods of solicitation.

G. The dealer pays business expenses and, by selling on credit, takes a risk of loss.

H. The dealer is dependent for a livelihood on personal efforts and ingenuity in establishing clienteles and good reputations.

Subp. 3. **Employee.** A dealer is an employee if all of the following criteria are substantially met.

A. The dealer must report regularly on sales, prospects, and work activities.

B. The dealer must report regularly for sales meetings and pep talks.

C. Although not usually required to work during hours fixed by the firm, the dealer is expected to meet a certain quota.

D. The dealer is restricted from selling on credit and must abide by prices set by the company.

E. Merchandise may be returned to company with no loss to the dealer.

F. The dealer is furnished leads and required to follow-up and report.

G. The dealer is required to concentrate on certain products listed as "specials" and follow schedules or routes worked out by the company.

H. If sales fall off, a manager or other company representative investigates and instructs the dealer how to increase sales.

I. Helpers may be provided by the company for dealers who maintain large volumes of sales.

J. The relationship is terminable by either party on short notice and without liability to the employee for noncompletion.

K. Where the dealer trains others, the dealer is paid and may be elevated to a managership.

5222.0190 AGENT DRIVERS.

Subpart 1. **Definition.** An agent driver is a salesperson who drives a truck in selling and delivering bread, milk, meat, beverages, laundry, dry-cleaning, or similar services. The driver may sell to consumers at retail prices or at wholesale to retailers.

Subp. 2. **Independent contractor.** An agent driver is an independent contractor if all of the following criteria are substantially met.

A. The driver does not contract with the firm to render personal services but only to buy a certain amount of a firm's products regularly.

B. The driver may hire and pay helpers or use substitutes.

C. Although the driver may work full time, the driver does so by choice; and selects working hours.

D. The driver selects customers, sets prices, and often sells on credit.

E. The driver pays truck maintenance costs and other business expenses.

F. The driver cannot return unsold products to the firm.

G. Either party may terminate the relationship at any time without incurring liability.

Subp. 3. **Employee.** An agent driver is an employee if all the following criteria are substantially met.

A. The driver is assigned a route and required to cover it at regular intervals.

B. Helpers or substitutes are not permitted.

C. Prices are set by the company.

D. The driver cannot handle competing lines.

E. The driver is required to keep reports of sales and other matters.

F. The driver collects from customers and turns money over to the company.

G. The driver has no authority to determine whether sales may be made on credit.

H. The driver reports to the company office at specified times to load trucks, return unsold goods, and report on activities as requested.

I. The driver is required to follow leads.

J. The driver is expected to solicit new customers and adjust complaints.

K. The driver may quit or a firm may fire the driver on short notice, and neither is liable for damages for noncompletion.

L. The driver receives paid vacation, sick benefits, or other similar benefits offered to nondriver employees of the firm.

5222.0200 PHOTOGRAPHERS' MODELS.

Subpart 1. **Definition.** A photographer's model is a professional who poses for photographs that are used for commercial purposes. The photographs are reproduced and appear in magazines, newspapers, or similar media to aid in advertising commercial products. The model is knowledgeable or trained in such subjects as the art of make-up, fashion, hairstyling, acting, and posture.

Subp. 2. **Independent contractor.** A photographer's model is an independent contractor if all of the following criteria are substantially met.

A. The model engages a booking agent for a certain compensation, usually ten percent of the model's fees. The agent makes and arranges appointments for the model.

B. Fees are fixed by the agent, usually on an hourly basis.

C. The model reserves the right to limit the time or period of work and the right to work only during certain hours.

D. The model releases property rights in each specific photograph that is to be used commercially.

E. The model supplies his or her own wardrobes appropriate to the roles he or she is engaged to portray.

F. The model is free to pose for anyone who desires his or her services.

G. The model is not engaged on a permanent or periodic basis but solely for specific jobs and the model reserves the right to cancel bookings made by his or her agents.

H. The creation and enactment of the roles assigned them are left to the models' own discretion and initiative.

I. The model is free to use his or her skill and training in other fields of business activity, such as radio, movie shorts, fashion shows, and television shows.

Subp. 3. **Employee.** A photographer's model is an employee if all of the following criteria are substantially met.

A. The model works for only one or two photographers or firms and is paid a salary or guaranteed minimum wage to work during fixed hours on the employer's premises.

B. The model is required to conform to instructions or suggestions on, among others, costume, coiffure, general make-up, posture, or the position and expression to assume in an assigned role.

C. The model is paid a salary for first call on his or her services and on a full-time basis or part-time basis.

D. The work is performed mostly on company premises and is done in accordance with a supervisor's or manager's views on the best method of illustrating the good points of the garments or other products being modeled.

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E. Either party may terminate the relationship at any time.

5222.0210 PROFESSIONAL PERSONS.

Subpart 1. **Definition.** A professional is a person in an occupation that requires education equivalent to college graduation or beyond and involves compliance with professional and statutory licensing or registration standards before the individual can practice. The professional field includes architects, attorneys, certified public accountants, and engineers.

Subp. 2. **Independent contractor.** A professional is an independent contractor when all of the following criteria are substantially met.

A. The professional sets up his or her own business office.

B. The professional hires and directs assistants or helpers.

C. The professional pays all expenses in connection with the business.

D. The professional offers services to the public.

E. The professional works at hours of his or her own choice.

F. The professional is dependent for a livelihood upon the amount of time, energy, and ingenuity applied to the work.

Subp. 3. **Employee.** A professional is an employee if all of the following criteria are substantially met.

A. The professional subordinates activities to the interests of the employer by working under conditions that make the professional's services an integral part of another's business.

B. The professional works when and where a firm dictates.

C. The professional is furnished an office and office facilities, and business expenses are met by the firm.

D. The professional is paid a fixed salary determined on a weekly, monthly, annual, or similar basis.

E. The professional's services are subject to supervision and review.

F. The professional cannot hire a substitute or helper.

G. The professional may be discharged at will and has the right to terminate the relationship at any time without liability.

H. The professional incurs no expenses nor make any investment.

I. The relationship is continuing.

5222.0220 DOCTORS OF MEDICINE; PART-TIME SERVICES FOR INDUSTRIAL FIRMS.

Subpart 1. **Definition.** Doctors are persons whose work requires licensure pursuant to Minnesota Statutes, section 147.02.

Subp. 2. **Independent contractor.** Doctors who, in addition to their private practices, enter into arrangements with industrial firms to examine and treat the firm's employees on a part-time basis, are independent contractors if all of the following criteria are met.

A. The firm is interested in securing a medical service rather than the personal service of the doctor and an employment relationship is not contemplated under the terms of the agreement between the parties. The doctor, in effect, accepts the firm as an additional client in the doctor's private practice.

B. The doctor has the right to leave the firm's premises during working hours if an emergency arises in private practice.

C. The doctor has the right to send a substitute to perform the services.

D. The doctor does not have the right to terminate the relationship on short notice.

E. Direct supervision and control over the services were not contemplated by the parties to the agreement.

Subp. 3. **Employees.** Doctors described in subpart 1 are employees if all of the following criteria are substantially met.

A. The doctor's services are materially integrated into the operating organization of the firm.

B. The doctor performs services of a substantial nature for the firm on a regular and continuing basis.

C. The doctor is subject to supervision and control by the firm to the extent necessary to require compliance with its general policies and procedures.

D. The doctor is accorded the rights and privileges that the firm extends to its employees generally.

Subp. 4. **Definition of factors.** This subpart explains the factors listed in subpart 3.

A. Materially integrated is determined by factors such as:

(1) the payment of a salary or fixed rate of pay as compared to remuneration on a fee basis;

(2) a contract term indicating a mutual intention to create an employer and employee relationship;

(3) the firm engages the services of a substitute in the event of the doctor's absence;

(4) the remuneration is reported as wages for social security purposes; and

(5) the doctor, for income tax purposes, reported the remuneration as wages.

B. Regular and continuing basis means agreement to a schedule of definite and fixed hours of service and the requirement to follow the schedule without substantial deviation.

C. Compliance with policies and procedures exists where the methods, routines, and procedures followed by the doctor are subject to supervision. The supervision may be of varying degree and nature, for example, supervision exercised by a medical director may include somewhat detailed control over the physician's medical routines where the supervision exercised by a hospital administrator may lay less emphasis on this aspect. However, the factor of compliance is met where the physician is required to follow the employer's rules regarding the physician's methods of operation generally, including the obligation to treat assigned patients, the report the physician must submit, the priorities the physician must follow both medically and administratively, and the standards the physician must maintain regarding equipment and cleanliness.

D. Rights and privileges include vacation and sick leave with pay, holiday pay, severance pay, and pension and insurance plans.

5222.0230 REAL ESTATE AND SECURITIES SALESPEOPLE.

Subpart 1. **Definition.** Real estate salespeople are persons licensed as real estate salespersons under Minnesota Statutes, chapter 82. Securities salespeople are persons licensed as agents under Minnesota Statutes, chapter 80A.

Subp. 2. **Independent contractor, real estate.** A real estate salesperson who is a qualified real estate agent under the Internal Revenue Code of 1954, section 3508(b)(1) is an independent contractor. The Internal Revenue Code of 1954, section 3508(b)(1) is incorporated by reference as the standard to be used under this chapter. A real estate salesperson who is not a qualified real estate agent under that standard is nonetheless an independent contractor if all the following conditions are substantially met.

A. The salesperson is licensed to one broker and the cost of the license is paid by the salesperson.

B. The broker makes available to the salesperson office facilities and property listing, and assists the salesperson by giving advice and by cooperating in his or her endeavors.

C. The broker furnishes the salesperson with necessary business forms, stationery, cards, and instructs him or her in office procedures and business policies either verbally or by means of written instructions, such as sales manuals.

D. The salesperson agrees to work diligently for the broker and to conduct his or her business and regulate his or her habits so as to maintain and increase the good will and reputation of the broker.

E. The salesperson agrees not to sell for other brokers.

F. The salesperson provides his or her own transportation and pays all expenses incurred in the solicitation of business.

G. The salesperson generally reports to work daily but works no fixed number of hours.

H. Meetings are held in the broker's office on a regular basis, usually weekly, but attendance at these meetings is voluntary.

I. Sales are closed in the name of the broker.

J. The money is turned over to the broker who pays the salesperson commissions at periodic intervals.

K. The salesperson's success is primarily dependent on his or her own initiative and effort.

Subp. 3. **Independent contractor, securities.** A securities salesperson is an independent contractor if all the following conditions are substantially met.

A. The securities dealer engages the salesperson in the furtherance of the business.

B. The salesperson is licensed to a particular dealer.

C. The dealer furnishes the salesperson with desk space, telephone and telegraph facilities, market quotations, statistical and bookkeeping services, and clerical assistance.

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D. The salesperson agrees to work diligently for the dealer and to abide by all laws, rules, and regulations under which the dealer operates the business.

E. The salesperson is not required to work fixed hours.

F. The salesperson concludes sales in the name of the dealer and pays over the money to the dealer.

G. The salesperson is paid on a commission basis at periodic intervals.

H. Under certain circumstances, the salesperson may bear a part of the losses resulting from a transaction.

I. Sales meetings are held regularly, but attendance is voluntary.

J. The salesperson's income is primarily dependent on his or her own initiative and effort.

Subp. 4. **Employee.** A salesperson is an employee when all of the following criteria are substantially met.

A. the salesperson is paid a salary or guaranteed minimum wage;

B. the employer requires fixed hours of work;

C. the employer requires that nearly all work be done on the broker's or dealer's premises;

D. the employer requires attendance at employer's office at specific times;

E. the broker or dealer has the right to interrupt or set the order of services;

F. the employer provides instruction or training in how the salesperson approaches prospects, closes sales, and works on particular problems; and

G. the employer requires the salesperson to report on activities.

5222.0240 REGISTERED AND PRACTICAL NURSES.

Subpart 1. **Definition.** Registered nurses are persons licensed as such pursuant to Minnesota Statutes. Practical nurses are persons licensed as such pursuant to Minnesota Statutes.

Subp. 2. **Independent contractor.** A nurse is an independent contractor if:

A. The nurse holds himself or herself out to the public as exercising an independent calling requiring specialized skills.

B. The nurse has full discretion in administering his or her professional services. Full discretion is present even though the nurse may be subject to the supervision of the attending physician.

C. The nurse is retained full time by the purchaser and the work relationship between the purchaser and the nurse is expected to terminate when the job is completed.

D. The nurse is not retained full time by a purchaser and the nurse is available to others for private duty nursing.

Subp. 3. **Employee.** A nurse who works for a hospital, clinic, nursing home, public health agency, or as an office attendant for a private physician is an employee if all the following criteria are substantially met.

A. The nurse works full time on the regular staff of the firm.

B. The nurse works for a salary and follows prescribed routines during fixed hours when he or she is not available for private duty nursing.

C. The nurse's services are integrated into the employer's business.

D. The employer has the right to set the order of and supervise the services.

5222.0250 UNLICENSED "NURSES."

Nurses' aides, domestics, and other unlicensed individuals who continue to classify themselves as practical nurses are, in general, insufficiently trained or equipped to render professional or semi-professional "nursing." Their services are normally those expected of maids, servants, and domestics, for example, bathing the individual, combing the individual's hair, reading, arranging bedding and clothing, preparing or serving meals, and occasionally giving oral medication left in their custody. The status of these persons is determined pursuant to part 5222.0080, domestic service.

5222.0260 TAXICAB DRIVERS.

Subpart 1. **Definition.** Taxicab drivers are persons who offer fee for service auto transportation within a limited area.

Subp. 2. **Independent contractor.** A driver is an independent contractor if all of the following criteria are substantially met.

A. The driver owns and drives his or her own cab, or leases it on a flat rate basis and pays a specified rental on a daily, weekly, or similar time basis.

B. The driver is free to work the shift he or she chooses, and there is no control over when and where the driver works.

C. The driver's sole compensation is the fares and tips collected from patrons.

D. The driver is required to comply with government rules and regulations and with firm regulations that are meant to ensure proper care and handling of the cab.

E. The driver is not required to report his or her whereabouts and is not subject to instructions on where to seek patrons.

F. If the driver leases the cab, the lessor is interested only in receiving the cab rental and, in many cases, payment for gasoline and oil that the driver is required to buy from the lessor.

G. The opportunity for profit or risk of loss rests with the driver, not the lessor.

Subp. 3. **Employee.** A taxicab driver is an employee if all the following criteria are substantially met.

A. The employer exercises control over the driver while the driver is in possession of the cab.

B. The driver must work during specified hours or on assigned shifts, pick up passengers on call, and report his or her whereabouts periodically.

C. The driver must account for fares collected.

D. The employer requires that the driver perform the services personally.

E. The employer gives instructions on matters of appearance, behavior, manner of seeking patrons, routes, order of services, and time off from duty.

F. Payment is in the form of a salary or salary plus a percentage of fares.

G. The driver is required to report personally and regularly or furnish written reports.

H. There are no business expenses on the part of the driver.

I. Both parties have the right to terminate the relationship at any time.

J. There is no investment or opportunity for profit or risk of loss on the part of the driver.

5222.0270 TIMBER FELLERS, BUCKERS, SKIDDERS, AND PROCESSORS.

Subpart 1. **Definition.** Timber fellers employ chainsaws or other mechanical devices mounted on logging vehicles to fell trees. Trees so felled may either be delimbed at the site or subsequently at roadside landings.

Buckers cut trees into merchantable lengths, with either chainsaw or heavier machinery such as slashers, harvesters, and processors. These operations may also be conducted either at the felling site or at roadside. In either case the product is piled or otherwise accumulated to facilitate subsequent transportation.

Skidders or forwarders either drag logs or trees to roadside landings, or load and transport logs or shortwood (fuelwood or pulpwood) to similar destinations.

Timber harvesters and processors combine two or more of the operations described above.

Mechanical debarking and/or chipping may also be coordinated with skidding or forwarding operations.

Chips are usually blown into semi-trailer vans for delivery to mills for remanufacture or to furnaces for fuel.

Subp. 2. **Neutral factors.** Due to the nature of the work and certain customs in the field, the following factors are neutral: lack of fixed hours of work, payment on a piecework basis, ownership of small tools, and requirements that the product of the work be within overall specifications.

Subp. 3. **Independent contractor.** A feller, bucker, skidder, or processor is an independent contractor if all of the following criteria are substantially met.

A. The worker is granted timber rights to tracts of land and legally binds himself or herself to remove all or certain parts of the timber within specified times at set prices.

B. The worker bargains for "package" jobs which he or she will do by methods of his or her own choice subject to production specifications required by the contracting company.

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C. The worker is paid to obtain a result, which does not necessarily depend on his or her own personal services.

D. The worker is free to hire and direct others to do the work and the worker is responsible for expenses incurred in fulfilling the contract.

E. The worker supplies the necessary equipment and sometimes the tools used by the helpers.

F. The worker determines the working hours and rates of pay, and otherwise controls the helpers' working conditions.

G. The worker holds himself or herself out to the public as a contractor and sometimes holds several logging contracts at the same time.

H. The worker is in a position to make a profit or suffer a loss, depending on the management of helpers, the care of the tools and equipment, and the methods used for doing the work.

I. As long as the worker produces final results that measure up to specifications, there is no desire or legal right to interfere with the worker's methods.

Subp. 4. **Employee.** A feller, bucker, skidder, or processor is an employee if all of the following criteria are substantially met.

A. The feller, bucker, skidder, or processor is assigned specific portions of the area to be harvested, but the right to work in other portions is not given to him or her exclusively.

B. The company assigns a number of workers to each area. They are told the kind and size of trees to cut. Trees designated to be cut because of a conservation or sustained-yield program do not indicate employment.

C. The company foreman periodically inspects the work area to be harvested and, if not satisfied with the progress being made, replaces the workers with another crew.

D. The crews may be shifted from one work area to another to speed up operations and if a worker is ill or not doing satisfactory work the foreman may replace the worker.

E. The worker chooses his or her own hours of work, but is required to finish each work area within a certain time and to do so usually requires long and regular hours of work.

F. The worker may be paid on a piecework basis or by the cord, but generally the company will not pay for products that do not measure up to specifications. Keeping records of wages paid and hours worked is not indicative of employment if it is required only to ensure that the products may be shipped in interstate commerce.

5222.0280 SAWMILL OPERATORS.

Subpart 1. **Definition.** Sawmill operators manage sawmills. A sawmill is used to convert logs into lumber or other forest products. The mills may be stationary or portable. Moving the logs into position, the sawing operation itself, and the stacking or removal of the products often require the services of a crew of workers.

Subp. 2. **Independent contractor.** A sawmill operator is an independent contractor if all of the following criteria are substantially met.

A. The operator has a substantial investment because he or she owns all or part of the mill and equipment used to move logs, lumber, or other forest products.

B. The operator contracts to saw, or harvest and saw, timber at so much per thousand board feet. The operator may bind himself or herself by contract to complete the job within a set time or to produce a daily or weekly quota.

C. The work calls for independent thought and action based on business judgment, experience, and training.

D. The operator contracts to do a specific job, using his or her own methods. The only control over the work concerns attainment of an acceptable result.

E. The operator hires, pays, and directs his or her own crews.

F. The operator is not required to do the work personally, but is responsible for its being done.

G. The operator is in a position to lose or profit from management of the workers and care of the equipment.

H. The operator is free to work for others.

I. There is no restriction of activities so long as the sawmill turns out products that meet the overall specifications in the contract.

Subp. 3. **Employee.** A sawmill operator is an employee if all of the following criteria are substantially met.

A. The purchaser of the services pays the cost of running the mill, even though the operator may own the mill.

B. The operator may pick a crew to operate the mill, but the company pays them and can fire them for poor work.

C. The company has the right to tell the operator what hours to work and require the operator to keep records of the amount produced and on hand daily.

D. The mill is moved from one tract to another as the company requires.

E. The operator may be paid a salary or pay may be computed on a piecework basis.

F. The services are terminable by either party at any time.

G. The operator has no business expenses nor opportunity for profit or risk of loss.

H. The operator cannot work for others.

5222.0290 TRUCK OWNER-DRIVERS.

Subpart 1. **Definition.** A truck owner-driver is any individual, partnership, or corporation (hereinafter referred to as "individual") who owns or holds a vehicle as defined in subpart 2 under a bona fide lease and who leases that vehicle together with driver services to an entity which holds itself out to and does transport freight as a for-hire or private motor carrier.

Subp. 2. **Independent contractor.** In the trucking industry, an owner-operator of a vehicle that is licensed and registered as a truck, tractor, or truck-tractor by a governmental motor vehicle regulatory agency is an independent contractor, not an employee, while performing services in the operation of his or her truck, if each of the following factors are substantially present.

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

B. The individual is responsible for the maintenance of the equipment.

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

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

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

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

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

Subp. 3. **Employee.** An owner operator of a vehicle as defined in subpart 2 is an employee, not an independent contractor, while performing services in the operation of the individual's truck, if all of the following criteria are substantially met.

A. The individual is paid compensation for his or her personal services:

(1) based solely on wage by the hour or a similar time unit that is not related to a specific job or freight movement;

(2) on a premium basis for services performed in excess of a specified amount of time; and

(3) from which FICA and income tax is withheld.

B. The individual is treated as an employee by the firm with respect to fringe benefits offered to employees by the firm.

C. The individual usually works defined hours.

D. The employer requires that the individual must perform the work personally and cannot change drivers.

E. The individual has no choice in the acceptance or rejection of a load.

F. The individual and firm have no written contract; or, if there is a written contract, it does not specify the individual's relationship with the firm as being that of independent contractor.

5222.0291 WASTE MATERIALS HAULERS.

Part 5222.0290 applies to truck owner-drivers who meet the definition of part 5222.0290, subpart 1 except that they transport waste materials instead of freight.

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5222.0292 MESSENGERS/COURIERS.

Subpart 1. **Definition.** Messenger/couriers are vehicle drivers who deliver cargo for a company licensed as a local cartage carrier or courier service carrier under Minnesota Statutes, chapter 221.

Subp. 2. **Independent contractor.** A messenger/courier is an independent contractor if all of the following criteria are substantially met.

A. The messenger/courier owns and drives his or her own vehicle.

B. The messenger/courier is free to accept or reject jobs from a carrier and there is no control over when the individual works.

C. The messenger/courier is compensated per delivery.

D. All expenses are paid by the messenger/courier and the opportunity for profit or loss rests with him or her.

E. The messenger/courier is responsible for the operating costs, including fuel, repairs, supplies, and vehicle insurance.

F. The messenger/courier determines the details and means of performing the services, such as the selection of routes and the order of deliveries.

G. The messenger/courier is responsible for the completion of a specific job and is liable for failure to complete the job.

Subp. 3. **Employee.** A messenger/courier is an employee if all of the following criteria are substantially met.

A. The messenger/courier must work during specified hours or an assigned shift.

B. Payment is on a salary or hourly basis rather than per delivery basis.

C. The employing carrier reimburses the messenger/courier for all expenses.

D. The employing carrier furnishes the delivery vehicle.

E. There is no investment or opportunity for profit or risk of loss on the part of the messenger/courier.

F. The employing carrier furnishes insurance for the vehicle used by the messenger/courier.

5222.0300 VARIETY ENTERTAINERS.

Subpart 1. **Definition.** A variety entertainer is a person who entertains and amuses audiences by means of acts or skits, dances, readings, feats of skill, songs, or comedy acts. The entertainer performs in the legitimate and burlesque theaters, movie houses, circuses, fairs, hotels, and night clubs.

Variety entertainers specialize in one or two types of acts. The more talented create and develop their own acts or routines and sometimes train others to help perform them. They often work in pairs or as members of troupes.

Subp. 2. **Neutral factors.** The status of a variety entertainer is not determined by the entertainer's entering into the form B contract of the American Federation of Musicians. This contract purports to establish an employer and employee relationship between the purchaser of the services and the entertainer. The actual relationship, rather than the terms of the contract, governs.

Subp. 3. **Independent contractor.** A variety entertainer is an independent contractor if all of the following criteria are substantially met.

A. The entertainer performs acts or routines as a series of short-term engagements for a number of different operators of theaters, night clubs, restaurants, and similar establishments.

B. The entertainer's contract, which is usually obtained through booking agents or personal representatives, specifies only the time, place, and duration of each engagement, and the pay.

C. The entertainer furnishes his or her own music arrangements, stage props, and dress.

D. The entertainer's act is not an integral part of another's business.

E. The entertainer maintains a high degree of individuality and establishes a reputation based on the acceptance by the audiences for which the entertainer performs.

Subp. 4. **Employee.** A variety entertainer is an employee when all of the following criteria are substantially met.

A. The entertainer is subject to supervision over the number, time, place, and length of rehearsals and performances, and as to duty and behavior, and is bound by rules and regulations to the purchaser of the services.

B. The entertainer's variety acts may undergo considerable change in order to suit the employer's purpose. It may be shortened, lengthened, or moved from one spot to another to weld it, with others, into one complete show or to coordinate it with other activities. In that case, individuality of the performer is subordinated to the purpose of enhancing the reputation of the purchaser of the services.

C. The entertainer's performance becomes an integral part of another's business.

D. The entertainer is engaged on a long-term basis.

E. The entertainer may not work for others.

F. The entertainer has no opportunity for profit or risk of loss, must frequently work with others, and can be shifted from one place to another.

G. The entertainer can be discharged at any time.

H. The entertainer cannot hire helpers or substitutes.

5222.0310 SPORTS OFFICIALS.

Subpart 1. **Definition.** A sports official is an individual engaged to referee games of sport such as basketball, hockey, or football where the level of competition requires the sports official to be a member of or certified by an organization whose purpose is to maintain minimum standards and qualifications of sports officials.

Subp. 2. **Independent contractor.** A sports official is an independent contractor if all the following conditions are substantially met.

A. There is a written contract between the sports official and the party or association engaging the services of the sports official that states specifically that the sports official is an independent contractor.

B. Payment to the sports official is for a set fee for each game officiated.

C. The official is free under the terms of the contract to accept or reject assignments of any game.

D. The sports official is not limited to exclusively officiating with the party engaging the services as a sports official.

Subp. 3. **Employee.** A sports official is an employee if all of the following criteria are substantially met.

A. The official is paid on an hourly, weekly, or similar time basis.

B. The official must work at the times and places designated by the purchaser of the official's services, and is not free to reject assignments.

C. The official is not free to sell his or her services to other parties while working for the purchaser.

D. The relationship is terminable at will without any liability to the official.

5222.0311 JOCKEYS.

Subpart 1. **Definition.** A jockey is a person who is licensed under Minnesota Statutes, chapter 240 to ride race horses for compensation as a jockey or apprentice jockey.

Subp. 2. **Independent contractor.** A jockey is an independent contractor with respect to the racetrack, trainer, and horse owner if all of the following criteria are substantially met.

A. Arrangements for rides are made by the jockey or by an agent of the jockey who receives a commission from the jockey.

B. The jockey is free to ride the horses of any stable.

C. The jockey is free to accept or reject a call.

D. The jockey provides his or her own saddle.

E. The trainer instructs the jockey regarding the nature of the mount, the setup of the race, and the trainer's expectations of the running of the race. The jockey is free to disregard the instructions of the trainer, and may decide the route to be taken, the rate of speed of the horse, and similar matters regarding the running of the race.

F. Payment is a fee paid on a per-race basis from the horseperson's account of the racetrack.

Subp. 3. **Employee.** A jockey is an employee of the trainer if all of the following criteria are substantially met.

A. The jockey rides only for the employing trainer or the jockey rides for other trainers only with the permission of the employing trainer.

B. The jockey is not free to reject the employing trainer's call.

C. The trainer provides or pays for the jockey's saddle.

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D. The jockey is not free to disregard the instructions of the trainer regarding the running of the race except for safety reasons.

E. The jockey is paid a salary or wage by the trainer on a time rather than per-race basis; compensation usually includes room and board, and the wage may be paid from the horseperson's account at the racetrack.

5222.0312 TRAINERS.

Subpart 1. **Definition.** A trainer is a person who is licensed as a trainer under Minnesota Statutes, chapter 240.

Subp. 2. **Independent contractor.** A trainer is an independent contractor with respect to the racetrack and to the owners if all of the following criteria are substantially met.

A. The trainer sets a fee which covers the daily fee, and bills the owner for the day pay and any additional supplies or services incurred in the care of the horse.

B. Tack, feed, board, and all supplies necessary for the ordinary care of the horse are provided by the trainer.

C. The trainer has a substantial capital investment in tack, equipment, and supplies.

D. The trainer makes all decisions regarding management of the horse while the horse is at the trainer's stable. If the trainer disagrees with instructions of the owner, the trainer is free to tell the owner to remove the horse from the trainer's care, and the owner must comply.

E. The trainer is free to stable and train the horses of other owners.

Subp. 3. **Employee.** A trainer is an employee of an owner if all the following criteria are substantially met.

A. The trainer is paid on a salary, wage, or similar time basis.

B. Tack, feed, board, equipment, and supplies for the care of the horse are provided by the owner.

C. The stables are owned or operated by the owner of the horses.

D. The trainer must comply with instructions of the owner regarding management of the horse, although the owner generally relies on the expertise of the trainer.

E. The trainer may stable and train the horses of others only with the permission of the employing owner.

F. The trainer's hours of work are set by the owner of the horse.

5222.0320 GENERAL CRITERIA FOR NONSPECIFIED OCCUPATIONS.

Parts 5222.0330 and 5222.0340 shall be used to determine if an individual is an independent contractor or an employee where the occupation is not defined in parts 5222.0020 to 5222.0312. Additionally, these parts provide interpretative guidance where the occupation is defined but the safe harbor criteria for that occupation are not all substantially met. Where some but not all of the safe harbor criteria are substantially met, those criteria which are substantially met shall be considered evidence of that status, and shall control where a conflicting result for that criterion is indicated by parts 5222.0330 to 5222.0340. Nothing contained in this chapter is intended to prevent or prohibit an insurer from seeking a reimbursement agreement from an insured where an insured disputes the insurer's underwriting or audit judgment on the application of this chapter for purposes of determining premium.

5222.0330 CONTROL OF METHOD AND MANNER OF PERFORMANCE.

Subpart 1. **Generally.** The most important factor in determining whether a person is an independent contractor is the degree of control which the purported employer exerts over the manner and method of performing the work contracted. The more control there is the more likely the person is an employee and not an independent contractor. Subparts 2 to 14 describe criteria for determining if there is control over the method of performing or executing services. The total circumstances, including the practices and the customs of the industry, must be considered to determine if control is present.

Subp. 2. **Authority over individual's assistants.** Control over the individual is indicated when the employing unit hires and pays the individual's assistants and supervises the details of the assistants' work.

Subp. 3. **Compliance with instructions.** Control is indicated when an individual is required to comply with detailed instructions about when, where, and how he or she is to work including the order or sequence in which the service is to be performed. Mere suggestions as to detail, or necessary and usual cooperation where the work furnished is part of a larger undertaking, does not normally evince control. Some individuals may work without receiving instructions because they are highly proficient in their line of work; nevertheless, the control is present if the employing unit has the right to instruct or direct the methods for doing the work and the results achieved. Instructions may be oral or may be in the form of manuals or written procedures which show how the desired result is to be accomplished. However, instructions required by state or federal law or regulation or general instructions passed on by the employing unit from a client or customer, do not evince control.

Subp. 4. **Oral or written reports.** Control is indicated if regular oral or written reports relating to the method in which the services

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

Subp. 5. **Place of work.** Control is indicated if work which could be done elsewhere is done on the employing units premises, especially when the work could be done elsewhere. When work is done off the premises, freedom from control is indicated except in occupations where the services are necessarily performed away from the premises of the employing unit.

Subp. 6. **Personal performance.** Control is indicated if the services must be personally rendered to the employing unit. Personal performance of a very specialized work, when the worker is hired on the basis of professional reputation, as in the case of a consultant known in the academic and professional circles to be an authority in the field, is a less reliable indicator of control. Lack of control is indicated when an individual has the right to hire a substitute without the employing unit's knowledge or consent.

Subp. 7. **Existence of continuing relationship.** The existence of a continuing relationship between an individual and the person for whom he or she performs services indicates the existence of an employment relationship. Continuing services may include work performed at frequently recurring, though somewhat irregular intervals, either on call of the employing unit or whenever work is available.

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

Subp. 9. **Training.** Training of an individual by an experienced employee, by required attendance at meetings, and by other methods, indicates control, especially if the training is given periodically or at frequent intervals.

Subp. 10. **Amount of time.** Control is indicated where the worker must devote full time to the activity. Full time does not necessarily mean an eight-hour day or a five- or six-day week. Its meaning may vary with the intent of the parties, the nature of the occupation, and customs in the locality. Full-time services may be required even though not specified in writing or orally. For example, a person may be required to produce a minimum volume of business which compels the person to devote all working time to that business, or the person may not be permitted to work for anyone else.

Subp. 11. **Simultaneous contracts.** If an individual works for a number of persons or firms at the same time, lack of control is indicated.

Subp. 12. **Tools and materials.** The furnishing of tools, materials, and supplies by the employing unit indicates control over the worker. When the worker furnishes these items, lack of control is indicated. Lack of control is not indicated if the individual provides tools or supplies customarily furnished by workers in the trade.

Subp. 13. **Expense reimbursement.** Payment by the employing unit of either the worker's approved business or traveling expenses, or both, indicates control over the worker. A lack of control is indicated when the worker is paid on a job basis and is responsible for all incidental expenses.

Subp. 14. **Satisfying requirements of regulatory and licensing agencies.** Control is not indicated where an employing unit is required to enforce standards or restrictions imposed by regulatory or licensing agencies.

5222.0340 INDEPENDENT CONTRACTOR OR EMPLOYEE, FACTORS TO CONSIDER.

Subpart 1. **Factors.** Among the factors to be considered, in addition to factors of control, when determining if services are those of an independent contractor or employee are those listed in subparts 2 to 9.

Subp. 2. **Right to discharge.** The right to discharge exists if the individual may be terminated with little notice, without cause, or for failure to follow specified rules or methods. There is no right to discharge if an independent worker produces an end result which measures up to contract specifications. Contracts which provide for termination upon notice or for specified acts of nonperformance or default are not solely determinative of the right to discharge. Restrictions on the right to discharge because of a contract with a labor union or with other entities are not relevant for purposes of this subpart.

Subp. 3. **Availability to public.** If an individual makes services available to the general public on a continuing basis, independent contractor status is indicated. An individual's services are offered to the public by, among other things:

A. having an office and assistants;

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B. displaying a sign in front of a place of business;

C. holding a business license;

D. having a listing in a business directory or a business listing in a telephone directory; or

E. advertising in a newspaper, trade journal, or magazine.

Subp. 4. **Compensation on job basis.** Independent contractor status is indicated by payment on a job basis rather than payment by the hour, week, or month. Payment on a job basis is customary where the worker is independent. Payment by the job may include a predetermined lump sum which is computed by the number of hours required to do the job at a fixed rate per hour or periodic partial payments based upon a percent of the total job price or the amount of the total job completed. The granting of a drawing account at stated intervals with no requirement for repayment of the excess drawn over commissions earned or the guarantee of a minimum salary indicates an employment relationship.

Subp. 5. **Realization of profit or loss.** Independent contractor status is indicated where an individual is in a position to realize a profit or suffer a loss as a result of his or her services. Opportunity for higher earnings from piecework or commissions does not indicate an opportunity for profit or loss. An opportunity for profit or loss is indicated by the following factors, among others:

A. hire, direct, and pay assistants;

B. provide own office, equipment, materials, or other facilities for doing the work;

C. continuing and recurring financial liabilities or obligations, relating to the work;

D. profit or loss in the work depends upon the relationship of receipts to expenditures;

E. expenses incurred in connection with the work are paid by the individual;

F. specific jobs are performed for prices agreed upon in advance; and

G. performance of the services affects the individual's business reputation, and not the business reputation of those who purchase the services.

Subp. 6. **Termination.** The worker's right to terminate the working relationship with the purported employer at will and without incurring liability for noncompletion indicates employment. A requirement to provide notice of termination for some period in advance of the termination is not relevant for purposes of this subpart. Independent contractor status is indicated where the individual agrees to complete a specific job, is responsible for its satisfactory completion, and is liable for failure to complete the job.

Subp. 7. **Substantial investment.** A substantial investment by a person in facilities used in performing services for another indicates an independent contractor status. The furnishing of all necessary facilities by the employing unit indicates the absence of an independent contractor status. Facilities include equipment or premises necessary for the work, but not tools, instruments, clothing, and similar items that are provided by individuals working in employment as a common practice in their particular trade. Substantial investment means a monetary investment representing something of considerable worth, in relation to the overall requirements of the person's chosen profession, trade, occupation, or vocation. A substantial expenditure of time or money for an individual's education is not indicative of an independent contractor status.

Subp. 8. **Responsibility.** If an employing unit is responsible for the negligence, personal behavior, and work actions of an individual in contacts with customers and the general public during times that services are performed for the employing unit, an employment relationship is indicated.

Subp. 9. **Services fundamental to business.** Employment is indicated where the services provided are necessary to the fundamental business purpose for which the organization exists.

STATE OF MINNESOTA
DEPARTMENT OF LABOR AND INDUSTRY
WORKERS' COMPENSATION DIVISION

In the matter of the Proposed Adoption by the Minnesota Department of Labor and Industry, Workers' Compensation Division, of Rules Governing Independent Contractors.

FINDINGS OF FACT AND CONCLUSIONS

The above-captioned rules were published in the State Register, together with a Notice of Intent to Adopt Amendments without a Public Hearing, on December 23, 1985. Proper notice was served upon all interested persons and groups registered for that purpose with the Department of Labor and Industry, Workers' Compensation Division, as required by Minn. Stat. § 14.22 (1984).

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

FINDINGS OF FACT

1. During the 30-day comment period following publication of the proposed rules, comments were received which are the basis for the changes to the proposed rules described at finding 2 a. through c. below.

2. The changes and the rationale for the changes to the proposed rules, all of which are nonsubstantial, are as follows:

a. Part 5222.0020, subp. 4.

Subp. 4. Cooperatives. An artisan who is a member of a labor cooperative or similar job-sharing entity is an employee of the cooperative or entity if the artisan's

investment in the cooperative is less than 15 percent and advance payments based on hours of work are made by the cooperative prior to completion of the job.

This subpart is needed to clarify the application of this rule to artisans in labor cooperatives. The labor cooperative is an emerging business form among artisans in the construction industry. Instead of a business owner who hires employees, artisans form a cooperative and purchase an ownership interest in the cooperative. Profits and expenses are shared among the cooperative members. With only a minimal investment by the artisan, the work relationship takes on employment characteristics. An investment of less than 15 percent is not sufficiently substantial to create a significant risk of profit or loss. The draw payment based on hours worked is also an employment characteristic. The independent contractor artisan's draw, if any, is based on the work completed or expenses incurred, not hours worked.

Through the notice and publication requirements of the Administrative Procedure Act, artisans are on notice that these rules apply to their employment relationships. As a clarification of the rule's application to artisans, this change is not substantial. It places no additional burdens or duties on artisans.

b. Part 5222.0292 Messenger/Couriers

Subpart 1. **Definition.** Messenger/couriers are vehicle drivers who ~~deliver cargo~~ transport property for a company ~~licensed as a local cartage carrier or courier service carrier under~~ operating under a permit or certificate pursuant to Minnesota Statutes, chapter 221, in local or intrastate commerce or operating as an exempt carrier pursuant to the Interstate Commerce Act.

Subp. 2. **Independent contractor.** A messenger/courier is an independent contractor if all of the following criteria are substantially met.

A. The messenger/courier owns ~~and drives his or her own vehicle.~~ or holds a vehicle under a bonafide lease or leases a vehicle and provides driver services in local or intrastate transportation and in interstate commerce the messenger/courier provides the means for the transportation of the property.

B. The messenger/courier is free to accept or reject jobs from a carrier and there is no control over when the individual works.

C. ~~The messenger/courier is compensated per delivery.~~ The messenger/courier's compensation is based on factors related to the work performed including (1) a percentage of any schedule of rates, or (2) a percentage of a lawfully published tariff or (3) is compensated per delivery.

D. All expenses are paid by the messenger/courier and the opportunity for profit or loss rests with him or her.

E. The messenger/courier is responsible for the operating costs, including fuel, repairs, supplies, and vehicle insurance.

F. The messenger/courier determines the details and means of performing the services, such as the selection of routes and the order of deliveries.

G. The messenger/courier is responsible for the completion of a specific job and is liable for failure to complete the job.

H. The messenger/courier enters into a contract that specifies the relationship to be that of an independent contractor and not that of an employee.

Subp. 3. **Employee.** A messenger/courier is an employee if all of the following criteria are substantially met.

A. The messenger/courier must work during specified hours or an assigned shift.

B. Payment is ~~on a salary or hourly basis rather than per delivery basis.~~ based solely by the hour or a similar time unit that is not related to a specific job.

C. ~~The employing carrier reimburses the messenger/courier for all expenses.~~ The company utilizing the service of the messenger/courier reimburses all expenses to the messenger/courier including those contained in the company's schedule of rates or lawfully published tariffs.

D. ~~The employing carrier furnishes the delivery vehicle.~~ The company utilizing the services of the messenger/courier is responsible for providing the vehicle and all of its expenses.

E. There is no investment or opportunity for profit or risk of loss on the part of the messenger/courier.

F. ~~The employing carrier furnishes insurance for the vehicle used by the messenger/courier.~~ The company utilizing the services of the messenger/courier is responsible for all operating expenses, including fuel, repairs, supplies and vehicle insurance.

All the changes to this rule were requested and agreed to by representatives of the drivers and the business owners; both the employer and employee representatives in the messenger/courier industry requested the changes to clarify the rule's application to them.

The wording changes in subpart 1 make the definition consistent with the technical terms of Minn. Stat. ch. 221 and with the usage common in the industry.

In subpart 2, the independent contractor safe harbor, item A is expanded to clarify that ownership of the vehicle includes bonafide lease agreements and to explain the nature of the driver services provided. Item C, compensation, is reworded to clarify the role of rate and tariff schedules. Like the per delivery requirements, these schedules are generally not based on an hourly time rate. Item H merely reflects current practice in the industry.

In subpart 3, the employee safe harbor, item B, is reworded to more accurately describe the compensation basis for employees in the industry. Item C, expense reimbursement, is changed to clarify the treatment of expenses contained in the rate schedules and tariffs. Item D is reworded and the treatment of vehicle expenses is clarified. Providing the vehicle includes responsibility for expenses incurred in its operation. The changes in Item F explain the nature of the operating expenses for which the employer is responsible.

The adopted rule is substantially the same as the proposed rule. The changes are primarily technical changes that make the rule more reflective of industry practices. The changes do not impose additional burdens on the parties who are subject to the rule, and are not substantial.

c. Part 5222.0320 General Criteria for Nonspecified Occupations

Parts 5222.0330 and 5222.0340 shall be used to determine if an individual is an independent contractor or an employee where the occupation is not defined in parts 5222.0020 to 5222.0312. Additionally, these parts provide interpretative guidance where the occupation is defined but the safe harbor criteria for that occupation are not all substantially met. Where some but not all of the safe harbor criteria are substantially met, those criteria which are substantially met shall be considered evidence of that

status, and shall control where a conflicting result for the criterion is indicated by parts 5222.0330 to 5222.0340. ~~Nothing contained in this chapter is intended to prevent or prohibit an insurer from seeking a reimbursement agreement from an insured where an insured disputes the insurer's underwriting or audit judgment on the application of this chapter for purposes of determining premium.~~

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This change was requested by a representative of the trucking industry. The deleted wording is the only area of the rules which addresses the insurer-insured relationship. The focus of the rules is the employer-employee relationship, not the employer-insurer relationship. Thus, the language is not necessary to the operation of the rules and its deletion has no effect on the rules' application. The change does not affect any rights or duties under these rules and is not substantial.

Based upon these Findings of Fact, I make the following:

CONCLUSIONS

1. That the Department gave proper notice of the proposed rules to all interested persons and groups.

2. That the Department has fully complied with all procedural requirements of law or rule in adopting the proposed rules.

3. That the Department has acted within its statutory authority in adopting these proposed rules.

4. That the proposed rules as modified are needed and reasonable and fully comply with substantive requirements imposed by law or rule.

STATE OF MINNESOTA

Steve Keefe

Steve Keefe, Commissioner
Department of Labor and Industry

Dated: January 30, 1986

JV/lc

STATE OF MINNESOTA
DEPARTMENT OF LABOR AND INDUSTRY
WORKERS' COMPENSATION DIVISION

In the Matter of the Proposed Adoption by the Minnesota Department of Labor and Industry, Workers' Compensation Division, of Rules Governing Independent Contractors

STATEMENT OF NEED AND REASONABLENESS

Introduction

Rules regarding independent contractors are authorized by Minn. Stat. § 176.041, subd. 1, and by Minn. Stat. § 176.83, subd. 11. The goals of these rules are twofold. First, the rules promote certainty in business planning, business relationships, and payroll auditing. Toward this end, the rules establish safe harbor criteria for independent contractor and employee status. Second, the rules are intended to reduce litigation regarding the issue of whether an injured worker is an employee or an independent contractor. The criteria developed by case law are essentially the common law criteria set forth in the Restatement of Agency.[1] Restatement (Second) Agency, Section 220 (2). The generality of the common law criteria invite litigation in their application, while the specificity of these rules promotes resolution without litigation.

Workers' compensation coverage is required only for employees. While coverage for independent contractors may in some cases be elected (Minn. Stat. § 176.012(e), only employees are covered as a general rule. Thus, the first step in determining coverage is to determine whether the work relationship is that of employee-employer or independent contractor. See Minn. Stat. § 176.021, subd. 1.

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[1]The common law factors are:

1. The right to control the means and manner of performance,
2. The mode of payment,
3. The furnishing of material or tools,
4. The control of the premises where the work is done and,
5. The right of the employer to discharge.

Guhlke vs. Roberts Truck Lines, 268 Minn. 141, 143; 128 NW 2nd 324, 326 (1964).

The determination is important both before injury and after injury. For employers and insurers, workers' compensation insurance premium is payable only on employees, and not on independent contractors. Thus, in auditing an employer's payroll for insurance exposure base purposes, an auditor must distinquish amounts paid to independent contractors from amounts paid to employees. Without the specific rules to distinguish employees from independent contractors, neither the insurer nor the employer knows whether the premium charged fairly reflects the exposure.

After an injury has occurred, the injured worker's status as an employee or an independent contractor determines whether benefits are available to the injured worker under Chapter 176. It is in this context that most of the case law has arisen in Minnesota. Typically an injured worker files a claim for benefits under Chapter 176, and the insurer or self-insurer denies liability on the grounds that the worker was an independent contractor. The specifity of these rules promotes resolution of this issue without litigation.

Most of the descriptions of business relationships for specific occupations are derived from a federal publication, Employer-Employee Relationship - Policies and Procedures, U. S. Department of Health and Human Services, P.O.M.S. part 3, chapter 021, sub-chapter 01, hereinafter "Social Security Guidelines". As the Social Security Guidelines generally reflect common law rules, the basic precepts of the Social Security Guidelines are readily transferable to the state workers' compensation context.

PART 5221. 0010 PURPOSE.

This provision explains the general framework for the rules. The rules identify specific occupations. For each occupation, a safe harbor is established for independent contractors and for employment status. The safe harbor concept is necessary to promote certainty in business relationships and, where injury occurs, to aid resolution of disputes regarding independent contractor status.

In order to limit the employee safe harbors to the independent contractor context, the use of term employee is explained.

PART 5222.0020 ARTISANS.

Subpart 1. Definition. This subpart defines artisans following the commonly understood usage of the term. The definition is necessary to establish the scope of the rule. The definition essentially distinquishes skilled from unskilled tradesmen. Training indicates that the artisan is capable of determining the means and

manner of performance. Skilled tradesmen have gone through a learning stage where they were necessarily subject to the close supervision and control of an employer. After completion of training, they frequently go into business for themselves.

Most artisans work in the building construction business. Many are self-employed and work in connection with repairing, altering, remodeling, or constructing buildings on a single job basis. Many work for construction contractors and for firms in the home improvement business. Others work as maintenance personnel in factories, hotels, department stores, and other large establishments. In many cases, the artisan alternates between wage employment for contractors and self-employment on small jobs.

Subpart 2. Independent Contractor. Item A stresses the artisan's freedom to determine the means for obtaining a finished product which conforms to specifications. This item states one of the common law criteria. Item B, freedom to select others, indicates responsibility for the result.

Items C, D, E, and F are indices of an independent businessman. Since most artisans furnish their own tools, this factor indicates neither employment nor an independent contractor relationship. Thus, item D states that the artisan furnishes equipment and incurs expenses beyond simply furnishing his own tools. Under item E, a substantial investment indicates a capital investment to generate a return. Under item F, the artisan holds himself out to the public as an independent contractor. This assists both parties to the business relationship in understanding the status of the artisan.

Item G, payment on a job basis, indicates responsibility for a result. Provision of lien waivers, item H, indicates that the artisan is considered the person responsible for payment of all supplies and materials used on the job.

Subpart 3. Employee. The safe harbor criteria for employment essentially mirror those for independent contractor status. Items A and B indicate the employer's authority to control the work by the employee.

Item C relates to the method of payment. Independent contractors are paid on a job basis, while employees are paid a wage regardless of the amount of work accomplished.

Items D and E indicate the lack of a substantial business investment. Only independent business persons risk personal profit or loss by exercising their independent judgment.

Item F indicates the lack of profit or loss possibilities. While an employee may well exercise independent judgment, the profit or loss is sustained by the employer rather than by the employee.

Item G, lack of liability for noncompletion, indicates that the artisan is not responsible for accomplishing the result desired by the purchaser of his services. This lack of responsibility for the final result is one of the common law criteria for employment.

PART 5222.0030 BARBERS.

Subpart 1. Definition. To provide consistency with other regulatory provisions, barbers are defined as persons who are licensed barbers under Minnesota Law. Apprentices are expressly excluded from the definition of barbers because, while in the learning stage, apprentices are necessarily subject to the close supervision and control characteristic of an employment relationship.

Subpart 2. Independent contractor. Items A and B indicate that the risk of profit or loss is on the barber rather than on the employer. Item C is necessary because the chair rental often includes the furnishing of linen and supplies. Item D reflects the Restatement control criterion, and the level of service is specified for the reason set forth in subpart 3 G below. A written agreement, Item E, permits the parties to plan their business and insurance arrangements in advance.

Subpart 3. Employee. Item A, payment on a salary or commission basis, indicates control by the employer. While some barbers work as employees of shop owners on a salary basis, the existence of a percentage wage arrangement is fairly common, and in itself does not rule out employment status.

As with artisans, some tools are furnished by the employee. Items B and C thus specify the level of equipment which is typically furnished by all barbers. The furnishing of the specified items is common among both employee and independent contractor barbers.

By not advertising, Item D, the barber is not holding himself out to the public as an independent business person.

Item E indicates the employer's right to terminate the employment relationship.

Item F is necessary to permit the parties to control the nature of their business relationship and to make their insurance arrangments accordingly.

Item G reflects the Restatement criterion. Specifying the level at which control may be exercised provides guidance to the parties in determining whether control is present.

Subpart 4. Factors Excluded. Many shop rules are the same for both employee and independent contractor barbers because they are required by unions or regulatory agencies. The employer's requirement that all workers abide by these rules thus is not the exercise of control by the employer over the means and manner of performance. As a result, these factors are not considered in determining whether barbers are employees or independent contractors.

PART 5222.0040 BOOKKEEPERS AND ACCOUNTANTS.

Subpart 1. Definition. The lack of a statutory definition of a bookkeeper requires the definition by rule. The typical duties of a bookkeeper are set forth in the definition. In general, the services of a bookkeeper are less complex than those of an accountant. Because accountants are defined by statute, it is reasonable for regulatory conformity to rely on the statutory definition. As accountants and bookkeepers are treated identically for the purposes of this rule, it is unnecessary to distinguish between them. For ease of use, the term "bookkeeper" is used to encompass both professions.

Subpart 2. Independent contractor. Item A, the renting of an office, indicates that the bookkeeper may incur a profit or loss in the provision of services. Making services available to the public, Item B, indicates the bookkeeper's status as an independent business person. Working for a number of clients on a fee basis, Item C, indicates lack of control by an employer. Payment of expenses, Item D, indicates that the bookkeeper may incur a profit or a loss. Item E, freedom to achieve results in whichever way the bookkeeper chooses, is one of the Restatement criteria for independent contractors. Performing services on premises other than those of the purchaser of the services, Item F, indicates lack of control over the performance of the services by the purchaser.

Subpart 3. Employee. Items A through F describe the usual pattern under which bookkeepers and accountants render services as employees. The performance of services for a single business at regular intervals, Item A, indicates an ongoing relationship rather than a relationship intended to terminate at the completion of a job. Similarly, working for a fixed salary indicates that payment is based on time rather than production.

Item B reflects the Restatement criteria regarding the furnishing of materials, supplies, and helpers. The fact that a bookkeeper does not advertise or maintain an office, Item C, indicates

employment because the bookkeeper is not in business for himself or herself. Receipt of fringe benefits and working fixed hours, Item D, are indications of employment under the Restatement criteria regarding the method of payment.

The fact that the bookkeeping system is not set up by the bookkeeper, Item E, indicates that the bookkeeper is not free to exercise professional judgement regarding the type of bookkeeping system. Item F also relates to the extent to which independent judgment may be exercised by the bookkeeper.

PART 5222.0050 BULK OIL PLANT OPERATORS.

Subpart 1. Definition. Items A through D list the common characteristics of bulk plant operators. This definition is necessary to determine the scope of the application of the rule.

Subpart 2. Independent contractor. Item A, being in complete charge, indicates that the operator is not subject to the control of an employer. Item B, the contract provisions, describes provisions typically found in the operator contract with the oil firm. These provisions are further indications of the operator's freedom of control. Item C, advertising, indicates that the operator's profit or loss is dependent on his or her own efforts. Item D, fixing hours and hiring personnel, indicates the operator's freedom from control.

Subpart 3. Employee. Item A reflects the method of payment criterion and the furnishing of equipment criterion from the Restatement. Furnishing equipment and payment of a salary are indicators of employment. A requirement to work fixed hours, Item B, indicates control by the employer. Item C, inclusion in employee benefit plans, evidences the parties' understanding that the operator is an employee. Item D, compliance with firm instructions, indicates control by an employer. Item E, obligation for wages and expenses, indicates that the operator has no profit or loss interest in the operation of the business. Item F, hiring for management on a salary basis under instructions regarding method of manner of performance, reflect the Restatement criterion regarding control.

PART 5222.0060 COLLECTORS.

Subpart 1. Definition. This subpart defines the scope of the rule's application. The rule is not limited to only collectors who work for collection agencies. The rule also covers businesses which maintain their own collection staffs.

Subpart 2. Independent contractor. Because of varying practices in the collection industry, this subpart is divided into two independent parts, Items A and B. Item A applies to individual collectors who actively solicit payments. Item B applies to persons, generally store owners, who agree to accept payment of bills on behalf of a business.

For the individual collector who actively solicits, Subitems 1, 2, and 3 indicate the extent of control permissible in order to maintain an independent contractor status. The purchaser of the collector's service assigns territories and dunning lists. The collector however, may set his or her own hours and schedule of contacts.

Subitem 4 also indicates lack of control by the purchaser of services as the collector reports to the office only to turn in collections and receive new dunning lists.

Subitems 5 and 6 relate to the method of payment. The collector's income is dependent on the amount of effort and skill which he puts into the work. Subitem 7, the freedom to work for other firms, is an indication of an independent business status and lack of employer control over the collector's time.

In Item B, covering the collector who accepts payment of bills, Subitems 1, 2, and 3 indicate freedom from control by the purchaser of the service. Subitem 4 indicates the extent of the collector's obligation to the purchaser. Subitem 5 permits the purchaser to furnish some equipment and supplies. The requirement to purchase a surety bond, Subitem 6, indicates that the collector is free from control by the purchaser of the collector's services. Subitem 7 indicates that payment may be either by salary or on a percentage basis. This reflects the practice in the industry. Subitems 8 and 9 indicate that the collector is free from control by the purchaser of the service.

Subpart 3. Employee. Item A, integration into the employer's business, is indicative of direction and control by the employer. When the success or the continuation of a business depends to an appreciable degree upon the performance of certain kinds of services, the persons who perform these services must necessarily be subject to a certain amount of control by the owner of the business. Item B, performing services pursuant to the employer's schedule, also indicates control.

Having first call on the collector's time, Item C, is a factor of control because it shows that the worker is not free to follow his own routines and schedules.

Insignificant business expenses or investments, Item D, is indicative of dependence on an employer for office facilities, and indicates that the employee has no right of control of the facilities.

Payment on a commission or salary basis, Item E, indicates an employment relationship in the collecting business. While a commission basis may indicate that the collector's gains are determined by the collector's efforts in conducting his work, other indicators of a profit or loss potential, in particular the use of capital, are not present in an employment relationship.

The right to establish the means and methods used in collecting, Item F, indicates control by the employer. Item G, the right to interfere with the order of services, also indicates that the employer has the right to control the means and methods by which the service is provided.

Item H, reporting regularly to the firm's offices, is applicable where collectors work from premises other than the employer's premises. This does not indicate an independent contractor relationship where regular reporting to the office is required.

Item I, a prohibition against hiring helpers, indicates an employment relationship because the contract is for personal services.

Item J, grounds for termination, relates to discharge criteria. An independent contractor is responsible only to meet a specific goal, such as a production quota. An employee may be dismissed for reasons other than completion of a specific job.

PART 5222.0070 CONSULTANTS.

Subpart 1. Definition. The definition of consultant is broad because of the variety of fields in which consultants work. The key to the definition is the special skill and training which the consultant brings to the workplace.

Subpart 2. Independent contractor. Maintaining an office, Item A, indicates lack of control by an employer. Advertising, Item B, is an indication that the consultant has a profit or loss potential in the conduct of his or her business. Freedom to hire helpers, Item C, indicates freedom of control in accomplishing the work tasks. Item D, success dependent on personal efforts, is indicative of the profit or loss potential from the consultant's services. Item E, a set fee, indicates that payment is for completion of a particular job. Item F, service for a specified period of time or purpose, also indicates that the consultant's service is for the purpose of accomplishing a specific job.

Freedom to work for others, Item G, indicates lack of control by an employer. Freedom to work his or her own hours, Item H, also indicates lack of control. Item I, J, K, and L indicate that the purchaser of the service lacks control over the consultant.

Subpart 3. Employee. Integration of the consultant's services into the business operation, Item A, is indicative of direction and control by the employer. A requirement to do the work personally, Item B, is an element of control because it indicates that the employer is interested in the methods as well as the results. Unavailability to the public, Item C, indicates control by the employer over the work time of the consultant. Lack of investment, Item D, indicates dependence on the employer for business facilities. A continuing relationship, Item E, indicates employment rather than an engagement for a single job or for sporadic or infrequent jobs.

The right of first call on the consultant's services, Item F, indicates control by the employer over the consultant's time. The right to quit at any time, Item H, indicates an employee relationship that can be terminated without incurring liability. Payment on a salaried basis, Item I, indicates a continuing relationship that is independent of the completion of a particular job.

Item J, the lack of a profit or loss potential, indicates an employment relationship because the consultant's returns are not dependent on the exercise of his or her ingenuity, initiative, or judgment in conducting a business or enterprise of his or her own.

PART 5222.0080 DOMESTIC SERVICE.

Subpart 1. Definition. The definition of domestic service is intended to be broad to include all household services. Because of the wide variety of services provided and the variety of conditions under which the services are provided, a broad definition is necessary.

Subpart 2. Independent contractor. Item A, the fact that the domestic is retained to perform a specific job and is not to perform services regularly over a considerable period of time, gives support to an independent contractor relationship. Freedom to work for others, Item B, indicates lack of control by the employer. Freedom to hire helpers, Item C, indicates that the control over the means and methods of the work lies with the domestic and not with the employer. Payment on job basis, Item D, indicates that the domestic is retained to complete a job, and that the employment relationship is not intended to be an ongoing relationship.

Subpart 3. Employee. Item A excludes household members and immediate family members from the definition of employee because of the likelihood that payment for domestic services to these persons is a gratuitous money allowance rather than a payment of wages specifically for services rendered. Item D, claiming as a tax dependent, is also excluded from employment because it indicates that the relationship is not established at arms length.

The fact that services are performed regularly and over a considerable period of time, Item B, supports an employment relationship.

The payment of $500.00 as wages for any three month period pursuant to Minn. Stat. § 176.041, subd. 1, establishes an employment relationship. If Item C is met, other criteria need not be considered.

Payment on a time basis, Item E, indicates that an employment relationship exists, because the payment is not for the completion of a specific job. Contributions to household expenses, Item F, indicate that the relationship is not employment but rather a family or personal relationship.

PART 5222.0090 BABYSITTERS.

Subpart 1. Definition. Licensed day care centers are excluded from the definition of babysitters because these centers are business entities which are independent contractors with respect to the parents who bring their children to these centers.

Subpart 2. Independent contractors. Item A, working on premises of someone other than the purchaser of the service, indicates lack of control by the employer. Item B, instructions given to the babysitter, indicates that the method and means are left to the babysitter, an indication of independent contractor status. Item C, exercising judgment, also indicates lack of control by an employer and freedom to determine the means and methods of doing the work. Item D, performing household chores, indicates that the babysitter's time is not subject to control by the purchaser of the sitter's services.

Subpart 3. Employee. Performing services on the employer's premises indicates control by the employer, Item A. Item B, devoting services exclusively to the performance of the employer's work, indicates control by the employer. Item C also indicates control by the employer.

Subpart 4. Babysitter services contracted through agencies. This subpart is necessary to determine whether the babysitter is an employee of the agency or of the parents. Where Items A through E are

substantially present, the agency is the employer because the existence of these factors forms a reasonable basis on which to conclude that the agency retains a right to exercise sufficient direction and control over the services of the babysitter to establish the relationship of employer and employee under the usual common law rules.

PART 5222.0100 INDUSTRIAL HOMEWORKERS.

Subpart 1. Definition. Industrial home workers are generally piece workers who manufacture or assemble articles in their homes. Typical articles handled by homeworkers are listed to increase the specificity of the definition.

Subpart 2. Independent contractor. The contract between the purchaser and the worker, Item A, indicates lack of control by the purchaser where the worker is only required to produce a final product at a particular time. Item B, furnishing materials by the purchaser, is the standard practice in the homeworker industry and does not indicate employment. Payment on a piecework basis, Item C, indicates that the purchaser is buying a completed product and does not have control over the worker's time. Item D, the lack of a requirement that the worker give preference to the purchaser's work, also indicates lack of control by the purchaser. Freedom to work for others, Item E, is also indicative of lack of control. Item F, the remedy for unsatisfactory work, indicates that the worker is to produce a completed product which meets specifications and that time is within the worker's control. Item G, hours of work and supervision, are also indicative of lack of control by the purchaser.

Subpart 3. Employee. Item A, integration into the employer's business, indicates direction and control by the employer. Item B, treating the worker as an employee, indicates an employment relationship. Item C, furnishing large tools and equipment, indicates lack of capital investment, and thus an employment relationship.

Payment on an hourly basis, Item D, indicates that the employer has control over the worker's time. Item E indicates this also. Item F indicates control over the means and method of performing.

The reporting requirement, Item G, indicates that the worker is not free to schedule his or her own time. The right to terminate prior to completion of the assignment, Item H, indicates an employment relationship rather than an independent contractor relationship. The ability to change the worker's assignment, Item I, indicates control by the employer over the means and methods of accomplishing the work.

PART 5222.0110 LABORERS.

Subpart 1. Definition. Laborers are broadly defined to include unskilled workers. Many of them perform menial tasks and odd jobs. They are present in virtually all fields of industry.

Subpart 2. Independent contractor. Item A, use of business judgment, indicates freedom from control by an employer. A requirement that services need not be performed personally, Item B, also indicates lack of control because the purchaser of these services is interested only in the results, and not in the methods used in obtaining that result. Availability to the public, Item C, indicates lack of control by an employer. Independent contractors, unlike employees, are in a position to regulate their working time or to divide their services as they see fit.

Freedom to hire and direct assistants, Item D, indicates responsibility only for the attainment of a result, and that the employer does not control the method by which the result is obtained. Furnishing of tools, Item E, indicates that the purchaser of the services is not free to determine the tools which the worker is to use.

The means by which work is obtained, Item F, indicates availability to the public. Responsibility for completion and freedom to use personal means and methods, Item G, indicates lack of control by an employer.

Lien waivers, Item H, indicates that the laborer is responsible for payment of all materials or supplies used on the job.

Subpart 3. Employee. A requirement to perform services personally, Item A, is an element of control because it indicates that the employer is interested in the methods as well as the results.

Working on the employer's premises, Item B, indicates control by the employer over the services of the worker. Payment on a time basis, Item C, indicates an employment relationship because the employer asssumes the hazard that the services of the worker will be in proportion to the regular payments, thus warranting the assumption that the employer has a right to control the performance of the worker's services.

Item D indicates the ways in which the employer exercises control over the means and method of doing the work. Lack of liability for noncompletion, Item E, indicates lack of an independent contractor relationship because independent contractors are responsible for completion of particular jobs.

PART 5222.0120 MUSICIANS; GENERAL.

The contract form of the American Federation of Musicians includes a standard recitation to the effect that the purchaser of the musicians' services is an employer. This standard language is not relevant to determining the actual relationship between the parties to the contract. The rule thus provides that it is not relevant.

PART 5222.0130 MUSICIANS; COOPERATIVE ORCHESTRAS.

Subpart 1. Definition. This definition describes the typical arrangement of smaller groups which are usually loosely structured.

Subpart 2. Independent contractor. The manner of payment and use of proceeds, Item A, shows that the members are retained on a job basis and that they realize a profit or loss from their activities. Freedom to work for others, Item B, is incompatible with the extent of control and direction generally exercised by an employer. Item C, the purchaser's inability to discharge a member, indicates that the purchaser does not have the control over group members that the purchaser has over employees. Where liability for damages is present, Item D, the relationship is not terminable at will and is thus not an employment relationship.

Subpart 3. Employee. Direction and control are usually present if services are integrated into the business operation of the purchaser. Where the purchaser's reputation is enhanced, Item A, performance of the musical services requires control by the purchaser.

A long term relationship, Item B, is more likely to be an employment relationship because the musicians are not engaged for a single job or for sporadic or infrequent jobs.

The restrictions described in Item C are typical of the degree and extent of control exercised by an employer. The method of payment and the responsibility for expenses, Item D, reflect control by the purchaser of the services.

PART 5222.0140 MUSICIANS; ORCHESTRA LEADER.

Subpart 1. Definition. The definition is consistent with the generally understood usage in the industry. The term union contractor is the term typically used in the music business for the musican who assembles a group composed of union members.

Subpart 2. Independent contractor. The freedom to select assistants, Item A, indicates lack of control by an employer, and is generally present in independent contractor situations.

Item B, availabililty to the public, indicates an independent contractor. Services of independent contractors are generally available to the public. One who is able to make his services available to the public is free from the control of services usually exercised by employers.

The right of control, Item C, indicates that the purchaser of these services does not have the control typically exercised over the provision of services by the employer.

The responsibility for expenses, Item D, shows that the leader is in a position to realize a profit or suffer a loss as a result of his management activities. The leader is responsible for a profit or loss through the use of ingenuity, initiative, and judgment in conducting the business. The manner of payment, Item E, indicates that the group has been retained to complete a job. Payment on a job basis rather than a time basis generally points to an independent contractor relationship, provided that the method of payment is not simply a convenient way of paying a lump sum agreed upon as the cost of doing a job.

By dealing only with the leader, Item F, the purchaser of the music demonstrates a lack of control over other members of the group.

The extent of control retained by the purchaser, Item G, is of such a general level as to not warrant a finding of an employment relationship.

Subpart 3. Subcontractor. This subpart explains the operation of the statutory liability for subcontractors in the context of musicians. The specific reference is helpful in this context because the subcontractor question is likely to arise where groups are involved in the contract relationship.

Subpart 4. Employee. By specifying the number, instruments and price, the purchaser is exercising the control over the assembler which an employer would exercise. Where Item A is met, the group is assembled according to the wishes of the purchaser rather than the orchestra leader.

Item B, the right of the purchaser to designate the leader, indicates the extent of control which the purchaser exercises over the assembler of the group. This degree of control is representative of an employment relationship.

Where the purchaser's control extends to making changes in the personnel of the musical group, Item C, the right to control as an employer is present.

Item D, payment on an hourly basis, is usually present in an employment relationship. The musician is responsible for the time spent in providing service rather than for the accomplishment of a specified result. Responsibility for business expenses means that the leader does not have an opportunity to realize a profit or loss through the exercise of management discretion.

PART 5222.0150 OUTSIDE COMMISSION PEOPLE OR MANUFACTURERS' REPRESENTATIVES; GENERAL.

The factors listed in this part are common to both independent contractor and employment relationships of outside commissioned salespeople. For this reason, these factors are not helpful in determining the nature of the relationship. Because these factors may be present in either relationship, additional criteria must be examined to determine the nature of the relationship.

PART 5222.0160 TRAVELING SALESPEOPLE.

Subpart 1. Definition. This definition describes characteristics of both independent contractor and employee salespersons. These criteria are described in the definition so that they are not considered indices of the nature of the employment relationship.

Subpart 2. Independent contractor. The freedom to develop one's own schedule, Item A, indicates a lack of control by an employer. Freedom to chose the means of transportation and responsibility for costs, Item C, indicates lack of control by an employer over scheduling and expenses. Responsibility for expenses, Item D, is present in independent contractor situations where the exercise of business judgment affects the return to the salesperson.

Subpart 3. Employee. Regularly reporting at the employer's offices, Item A, is a method used by employers to exercise control over the activities of the salesperson. Control is also present where the employer determines the hours or times that the salesperson must work, Item B. A salesperson who must follow and report on leads, Item C, is not free to accept or reject assignments as an independent contractor would be. Training or meeting requirements, Item D, are typically imposed by employers in order to upgrade the quality or output of their employees. An independent contractor would be responsible for his or her own training.

Requiring the salesperson to canvas territory at regular intervals, Item E, is control exercised by an employer over the means and method of performing the work.

Item F, dependence on salespersons for disposing of merchandise applies, indicates integration. The salespersons become a vital cog in the firm's machinery and control over them consequently becomes necessary in order to move the merchandise.

PART 5222.0170 HOUSE-TO-HOUSE COMMISSION SALESPEOPLE.

Subpart 1. Definition. House-to-house commissioned salespeople are used by a wide variety of businesses. Because the criteria for this group differs from that of the house-to-house dealer salespeople, the definition includes the principle characteristic distinguishing this group from the dealer group, see Part 5222.0250.

Subpart 2. Independent contractor. By not assigning exclusive rights to the salesperson, Item A, the purchaser of services signals the lack of dependence on the efforts of the salesperson.

There is a lack of control by an employer when the salesperson is not required to work at specified times or during fixed hours, Item B.

Lack of training, Item C, demonstrates a lack of investment in the salesperson by the purchaser of services. Freedom to establish schedules and the methods and means of selling are present where an employer is not exercising control over these salespersons' performance of duties.

Payment of expenses, Item D, means that the return to the salesperson may be increased or decreased by the judgment exercised in regard to expenses. This is generally present in independent contractor situations.

The lack of minimum performance standards and the right to refuse leads, Item E, are present in situations where an employer does not have the right to control the performance of services by the salesperson.

Subpart 3. Employee. Working full time for one company, Item A, provides the opportunity for control over the salesperson.

Reliance on the salesperson, Item B, indicates integration. When the success or continuation of a business depends to an appreciable degree upon the performance of the salesperson's services, the salesperson must necessarily be subject to control by the business.

The lack of freedom to reject leads or assignements, Item C, is a factor in establishing control by an employer. The employer can direct the means and manner of performance where the salesperson must follow leads and instructions.

Regular reporting, Item D, is also an element of control. It enables the employer to determine productivity and the extent to which instructions are being followed.

The requirement to regularly canvas the territory, Item E, is also a means by which an employer establishes control over the salesperson's performance of the job.

Item F, the requirement to attend salesmeetings and training courses, is a factor in establishing control. It also demonstrates reliance on the salesperson's activities and an investment by the employer in maintaining or increasing the quality of service obtained from the salesperson. Item H, a production quota, is an element of control and reflects the minimum performance standards set by the employer for continuation of the relationship.

PART 5222.0180 HOUSE-TO-HOUSE DEALER SALESPEOPLE.

Subpart 1. Definition. Dealer salespersons are distinguished from house-to-house commissioned salespersons, Part 5222.0240, in that they normally have an investment in the merchandise which they sell.

Subpart 2. Independent contractor. The requirement to work fixed hours, Item A, is a factor in control by the employer over the performance of the dealer's activities. Scheduling freedom indicates lack of the requisite control to establish an employment relationship.

Inventories and delivery vehicles, Item B, represent capital investment on which the dealer may recognize a profit or loss through the management of these resources.

The freedom to employ others, Item C, means that the services need not be performed by the dealer personally. The requirement to perform services personally is generally present in an employment relationship.

The lack of a requirement to comply with instructions or to attend sales meetings, Item D, indicates lack of control by an employer.

A dealer who is free to accept or reject suggestions from the firm, Item E, is operating relatively free of control by an employer. This factor thus tends to establish an independent contractor.

The payment of expenses, Item G, and the presence of a loss possibility indicate that the return to the dealer depends on the exercise of the dealer's judgment. Poor judgment may result in a loss to the dealer.

Item H, dependence on personal efforts and ingenuity account for a livelihood, also indicate that the dealer's return is dependent on management skills and the exercise of good business judgment. These factors tend to establish an independent contractor relationship.

Subpart 3. Employee. A requirement to report regularly, Item A, is present in most employment relationships because the employer exercises control over the means and manner of performing the work.

Item B, a requirement to report for salesmeetings, also indicates control by the employer over the dealer's time and methods of performing the work.

A quota requirement, Item C, is a minimum standard set by an employer for the performance standard necessary to continue their relationship. The quota is an indicator of the employer's reliance on the services of the dealer for the employer's business success. A restriction from selling on credit, Item D, means that the dealer is not free to exercise judgment in the granting of credit and thus does not suffer a risk of loss from selling on credit. This risk is retained by the employer. Returnable merchandise, Item E, means that the dealer does not have a substantial capital investment in the business or does not risk loss from sales not made. The lack of a capital investment factor tends to indicate an employment relationship.

A requirement to follow-up on leads, Item F, is a control factor by the employer. An independent contractor is generally free to follow leads or not as the contractor deems in his own best interests. The requirement to follow schedules and to promote certain products reflects the level of control exercised by the employer over the performance of the activities of the dealer.

Item H, instructions on how to increase sales, reflects the investment which the company has in the dealer and also indicates the reliance of the company on the dealer's activities.

The lack of freedom to hire assistants, Item I, means that the dealer's personal services are required and that helpers, if any, are provided by the company rather than by the dealer. The presence of this factor indicates an employment relationship.

Termination at will and without liability, Item J, is an indicator of an employment relationship. An independent contractor is generally liable for damages for non-completion if the relationship is severed prior to completion of the job.

Payments to the dealer for training others, Item K, means that control is exercised by the firm and not by the dealer. This factor is present in employment relationships but not in independent contractor situations.

PART 5222.0190 AGENT DRIVERS.

Subpart 1. Definition. The definition of agent driver describes the typical delviery and selling characteristics of these drivers and includes examples for clarity.

Subpart 2. Independent contractor. The requirement to do the work personally is an element of control because it indicates that the employer is interested in the methods as well as the results. Item A, agreeing to buy only a certain amount of the firm's products, indicates that the firm's interest is in the results and not in the manner in which it is obtained.

The right to hire and pay helpers, Item B, shows lack of control by the firm over the means of performance. As with personal services, the firm's primary interest is in the result rather than in the manner of performance.

Freedom to select working hours, Item C, also indicates lack of control by an employer.

In an employment relationship, the employer would select customers, set prices, and determine credit worthiness. The driver's responsibility for these factors, Item D, indicates lack of control by an employer. The importance of exercising good business judgment in cost control, Item E, indicates the possibility of a profit or loss risk on the part of the driver.

The risk of profit or loss resulting from business decisions is also apparent when Item F, inability to return unsold products, is present.

Unlike most independent contractor situations where the contractor is responsible for completion of a job, the continuing nature of the relationship in the agent driver case is such that the driver can generally terminate without incurring any liability. This factor, Item G, is thus not helpful in determining the nature of the relationship, and is present in the criteria for the employee's safe harbor also.

Subpart 3. Employee. Route assignments and scheduling are factors indicating control and thus an employment relationship, Item A. Where this item is present, a driver is not free to determine the means and methods of performance.

The requirement for personal services, and a restriction on hiring substitutes or helpers, Item B, are present in employment relationships and not in independent contractor relationships. The employer's interest is not only in obtaining a result, but also in the means of accomplishing the result.

Because the driver does not purchase the goods for resale, prices are set by the company, Item C. The presence of this factor results from the lack of capital investment by the driver and is a factor indicating control by the employer.

A driver who cannot work for others, Item D, is subject to control by the employer regarding the means and manner of performance.

The requirement to keep records, Item E, is a means of exercising control over the driver and monitoring the performance of the driver.

The prohibition on credit sales, Item G, means that the driver does not have discretion in the granting of credit. The determination of credit worthiness is made by the firm because the firm bears the risk of loss if the buyer does not pay.

The requirement to report and return unsold goods, Item H, indicates control by the employer and lack of a capital investment by the driver.

The requirement to follow leads, Item I, is present in employment relationships as a factor in the control by the employer of the means and manner of performance. Item J, soliciting new customers and adjusting complaints, indicates the level of discretion exercised by the driver. This discretion is not sufficient to establish an independent contractor status.

Termination at will and without liability for damages for noncompletion, Item K, is an indicator of an employment relationship. This factor is not significant in the agent driver context because it is also generally present for agent drivers who are independent contractors.

Treating the driver as an employee for fringe benefit purposes, Item L, indicates that the firm considers the driver to be an employee.

PART 5222.0200 PHOTOGRAPHERS' MODELS.

Subpart 1. Definition. The term photographer's model is fairly descriptive, and the definition limits its scope to persons who are professional. The requirement for knowledge or training tends to indicate the presence of professionalism.

Subpart 2. Independent contractor. A booking agent, Item A, indicates a lack of control by an employer regarding assignments.

Negotiation by the agent of the fees for the model's services, Item B, indicates that fees are not set by an employer. Control of the working hours by the model, Item C, means that control is not exercised by an employer in this important factor in determining an employment relationship. The purchaser of the services does not have an exclusive claim to the model's time. Releasing property rights, Item D, indicates that the model has a proprietary interest in the results of the services rendered. This is not the case in an employment situation.

Item E, supplying the wardrobe, shows that the tools of the profession are provided by the model. Freedom to work for others, Item F, indicates lack of control by an employer. Engagement on a job basis, Item G, shows that the model is hired for a job and that an ongoing employment relationship is not contemplated.

Items H and I indicate lack of control by the purchaser of the model's services.

Subpart 3. Employee. Item A, payment and work hours, indicate control by the employer. Item B also indicates control in the performance of the work. Salary payment on a full time or part time basis, Item C, indicates a long term relationship and an income that does not depend on the model's business skills. Item D indicates artistic control by the employer. Item E, termination, indicates that the model is not liable for damages for failure to complete an assignment.

PART 5222.0210 PROFESSIONAL PERSONS.

Subpart 1. Definition. The definition reflects the common understanding that professions are those occupations that require education or training and restricted entry regulated by the state. Persons such as professional sports players would not be professionals under this definition because entry to the field is not statutorily controlled and there are no educational requirements.

Subpart 2. Independent contractor. Maintaining one's own office, Item A, indicates lack of control over the professional. In the typical employment situation, the provision of offices on the employer's premises provides the opportunity for control by the employer.

The hiring of assistants, Item B, indicates freedom to determine the means and manner of obtaining the desired results. Control by an employer is lacking.

Payment of expenses, Item C, means that the professional's profit or loss is dependent on the professional's business judgment. Offering services to the public, Item D, is an indication that an employer does not control the services of the professional. Rather, the professional is free to work for others.

Scheduling freedom, Item E, also indicates lack of control by an employer and the absence of an employer interest in the means and methods used to accomplish the result.

Dependence for a livelihood on the time, energy and ingenuity of the professional, Item F, means that the profit or loss of the business is directly related to the efforts of the professional. The professional retains a risk of loss, unlike an employment situation.

Subpart 3. Employee. Integration into the employer's business, Item A, is a factor in establishing control. When the success or continuity of a business depends to an appreciable degree on the performance of the professional's services, the professional must necessarily be subject to control by the owner of the business.

Providing office facilities, Item C, implies that the employer may direct and supervise the professional's work. Payment on a salary basis, Item D, means that the professional bears no risk of loss in the exercise of professional judgment. Supervision, Item E, is a means of controlling the provision of services by the professional and is present in an employment relationship.

A prohibition on hiring substitutes or helpers, Item F, means that the purchaser of the services wants the personal services of the professional. This is a factor present in employment situations.

Terminability at will, Item G, is present in employment relationships and means that the professional is not liable for failing to complete a job.

A lack of capital investment, Item H, is present in employment relationships. The professional bears no risk of profit or loss in the employment of capital.

Employment relationships are often continuing, Item I, because the professional has not been retained to complete a specific job or accomplish a particular result.

PART 5222.0220. DOCTORS OF MEDICINE; PART TIME SERVICES FOR INDUSTRIAL FIRMS.

Subpart 1. Definition. Reliance on the statutory licensure provisions provides specificity, consistency with other statutory requirements, and brevity.

Subpart 2. Independent Contractor. Item A, lack of interest in a personal service and lack of an employment relationship in the contract, indicates the parties intent to establish an independent contractor relationship.

Item B, the right to leave the firm's premises, shows lack of control by an employer over the time of the doctor.

Item C, the right to send a substitute, is a factor tending to establish an independent contractor relationship. An employment relationship is generally a contract for personal services. The fact that the contract obligations can be met without the doctor's personal service indicates lack of an employment relationship.

The lack of a right to terminate on short notice, Item D, also indicates lack of an employment relationship. Employment relationships are generally terminable at will, while independent contractor relationships require the completion of a job.

The lack of direct supervision and control, Item E, demonstrates lack of employer control over the means and methods of performing the services. This is a characteristic of independent contractor arrangements.

Subpart 3. Employees. Material integration, Item A, indicates an employment relationship because the services are of sufficient significance to the employer that the employer controls the provision of services as part of its business management.

Working on a regular and continuing basis, Item B, means that the doctor generally must schedule definite hours and must follow the schedule without substantial deviation.

Supervision and control, Item C, is a factor in establishing an employment relationship. The employer has the right to supervise the means and method of performance.

Treating the doctor as an employee, Item D, tends to indicate an employment relationship because it demonstrates that the parties view their relationship as an employment relationship.

Subpart 4. Definition of factors. This definitional section is necessary to expand upon the general employment criteria of subpart 3 in the context of the doctor-firm relationship. Thus, the subpart takes each of the employment criteria and describes its application to the relationship. This section increases the specificity of the rule and assists parties in applying the rule.

PART 5222.0230 REAL ESTATE AND SECURITIES SALESPEOPLE.

Subpart 1. Definition. The definition relies on the statutory licensing criteria in order to provide specificity and consistency in the state-wide treatment of the status of these salespeople.

Subpart 2. Independent contractor, real estate. The items described in this section, taken together, evince a coordination function by the broker rather than the direction and control necessary to establish an employment relationship. While some direction is present, it is not sufficient to establish employment under the common law test. Reference to the federal standard is included to provide consistent treatment of this group.

Subpart 3. Independent contractor, securities. As with the real estate broker, the function of the securities dealer is that of a coordinator in the independent contractor situation. There is some direction exercised by the dealer, but it is not sufficient to establish the control necessary for an employment relationship.

Engaging the salesperson in the furtherance of the business, Item A, means that the services are integrated into the business operation of the firm. While this provides an opportunity for control, the degree is not sufficient to establish control.

Item B, licensing to a particular dealer, is a characteristic of the dealer-salesperson relationship. This factor does not in itself indicate an independent contractor relationship, but rather is included because it is descriptive of the relationship.

Item C, the furnishing of office equipment and supplies, tends to show the existence of an employee relationship in other contexts. However, in the securities business, it is typical of the relationship between the dealer and the salesperson and does not establish a basis for controlling the services of the salesperson.

Control is exercised by the dealer at the level indicated in Item D. Control at this level of generality does not establish control over the means and manner of performing the salesperson's work.

The freedom to work one's own hours, Item E, indicates lack of control by the dealer over the means and manner of performing the work. Item F, concluding sales in the name of the dealer and paying the proceeds to the dealer, is descriptive of the relationship between the salesperson and the dealer. It reflects the level at which control is exercised by the dealer. Payment on a commission basis, Item G, is a strong indication that an employer/employee relationship is not present. It indicates that the dealer does not have the right to direct and control the performance of the salesperson's services for the purpose of getting a fair return for the wages paid.

Item H, the opportunity for a loss, generally occurs where a salesperson has not complied with regulatory requirements. Where losses result, the dealer may charge the losses to the salesperson. The possibility of a loss as a result of the salesperson's work tends to establish an independent contractor.

Voluntary attendence at sales meetings, Item I, shows lack of control over the salesperson's services. Where the dealer does not have the right to require attendence, the dealer lacks control over the salesperson's use of his or her time.

Item J, income dependent on initiative and effort, indicates that the salesperson is free to use ingenuity, initiative and judgment in performing the services. Control by the dealer is lacking where this occurs.

Subpart 4. Employee. Payment of a salary or guaranteed minimum wage, Item A, indicates an employment relationship. The dealer assumes the hazard that the services of the salesperson will be in proportion to the regular payment; thus, in order to protect its investment, the dealer has the right to direct and control the performance of the salesperson's services.

Requiring the employee to work fixed hours, Item B, prevents the salesperson from being the master of his or her own time, and provides the dealer with the opportunity to control the employee.

Item C, the requirement to work on the dealer's premises, implies that the dealer has control over the means and manner of doing the work. The employee is physically within the employer's direction and supervision.

Item D, requiring attendence at the employer's office at specific times, establishes the extent of the employer's control over the time of the salesperson.

Item E, the right to interrupt or set the order of services, shows that the salesperson is not free to follow his or her own pattern of work but must follow the established routines and schedules of the employer. This indicates control by the dealer.

Training, Item F, is a factor of control because it indicates that the employer wants these services performed in a particular method or manner.

Item G, the requirement to report on activities, shows that the salesperson is compelled to account for his or her actions. The reports are of use to the dealer for monitoring performance to determine whether instructions are being followed and whether the salesperson is following the appropriate means and manner of performing.

PART 5222.0240. REGISTERED AND PRACTICAL NURSES.

Subpart 1. Definition. The definition relies on licensing under Minnesota Law so that reliance on the statutory definition ensures conformity with existing practice and permits reliance on criteria which are established and generally well understood.

Subpart 2. Independent contractor. Item A, holding oneself out to the public, evidences that the services are performed in the conduct of an independent trade, business, or profession.

Item B, discretion in administering services, indicates lack of control by an employer. The supervision by a physician is characteristic of most nursing services, and thus is not a factor distinguishing independent contractors from employees.

Item C, an expectation that the job will terminate, indicates an independent contractor status because the nurse is hired to do a particular job.

Item D, availability to other employers, indicates lack of control by a single employer. A nurse who is free to work for others is not subject to control by an employer regarding the nurse's time.

Subpart 3. Employee. Item A, a full time position on the regular staff, shows integration into the business of the employer and indicates control by the employer over the time of the nurse.

Item B, payment on a salaried basis and fixed hours of work, are attributes of an employment relationship. The salary indicates a continuing relationship typical of employment relationships. Where the hours of work are set by the employer, the employee is not the master of his or her own time, and is thus subject to control by the employer.

Item C, integration, is present when the success or continuation of a business depends to an appreciable degree upon the performance of the nurse's services. Where this is the case, the nurse must necessarily be subject to a certain amount of control by the owner of the business.

Item D, the right to set the order of services, indicates control over the means and method of performing the work. It shows that the nurse is not free to follow his or her own pattern of work, but is subject to direction from an employer.

PART 5222.0250 UNLICENSED "NURSES".

This part is needed to clarify the treatment of persons whose services are often referred to as nursing services but who are not licensed as nurses. The nature of the services provided is similar to that provided by domestics, and it is thus reasonable to determine the status of these persons pursuant to the rule for determining the status for domestic service.

PART 5222.0260 TAXICAB DRIVERS.

Subpart 1. Definition. Fee for services distinguishes the taxi driver from other auto drivers who may provide personal transportation to persons gratis. The reference to auto transportation is necessary to distinguish the taxi driver from other drivers who provide transportation by bus or van. The reference to providing service within a limited area is necessary to distinguish taxi drivers from persons who provide inter-state transportation.

Subpart 2. Independent contractor. Owning or leasing the cab, Item A, evidences an investment in the means by which the service is provided.

Item B, freedom to select shifts, means that the hours of work are not set by an employer and the driver is free from control over his or her time.

Item C, compensation, means that the driver's income depends on his or her own ingenuity in getting fares.

Item D, compliance with government regulations, is included to clarify that a requirement to comply with these regulations does not evidence control by an employer.

Item E, the lack of a requirement to report or to be subject to instructions, evidences lack of control by an employer over the means and methods of performing the work.

Item F, the lessor's monetary interest, indicates that the lessor does not stand to gain a profit or loss through the driver's operation of the cab. The lessor's interest is only in receiving a rental for the cab or in some cases payment for supplies used.

Item G, the risk of profit or loss, is with the driver in an independent contractor situation because the profit depends on the driver's skill and judgment in the means and manner of performing the work.

Subpart 3. Employee. Item A focuses the control test on those elements of control which are present when the driver is in the cab. This is the time period that is material because the driver's activities in the cab determine the success or failure of the cab as a business.

Item B indicates that the employer also exercises some control when the driver is not driving, such as assigning work hours or ordering passenger pickups.

The requirement to account for fares collected, Item C, means that the driver is not taking in the money for himself only, as an independent contractor would. Rather, the driver is collecting fares on behalf of the employer.

Item D, the requirement to perform services personally, indicates an employment relationship because the driver is not free to hire or assign someone else to get the job done. Rather, the services of the driver are required.

Item E, giving instructions on appearance, routes, and so forth are the ways in which the employer exercises control over the means and method of performing the work.

Payment on a salary basis, Item F, indicates that the employer assumes the hazard that the driver's services will be in proportion to the income generated by the driver's work. The risk of profit or loss is borne by the employer.

The requirement to report regularly, Item G, is an element of control. It shows that the driver is compelled to account for his or her actions. The reports are a form of supervision by the employer in that they enable the employer to determine whether instructions are being followed.

The absence of business expenses, Item H, is an indication that an employer has the right to control the methods and means of doing the work, and thus has control of the expenses.

Item I, the right to terminate, is generally present in an employment relationship where the employee is not responsible for completing a job. An independent contractor, on the other hand, is responsible for completion of a job and may not terminate the relationship prior to completion of that job without facing liability for damages for noncompletion.

The lack of an opportunity for profit or risk of loss, Item J, means that the driver is not generally free to use his or her own ingenuity, initiative, or judgment in conducting the business. The driver simply follows the instructions of the employer, and the risk that those instructions may lead to a loss is with the employer.

PART 5222.0270 TIMBER FELLERS, BUCKERS, SKIDDERS AND PROCESSORS.

Subpart 1. Definition. This definition describes the work of fellers, buckers, skidders and processors in a manner consistent with the general practice in the logging field.

Subpart 2. Neutral factors. This subpart lists factors which are generally present in both employment and independent contractor situations. They are thus not helpful in determining the nature of the relationship. This subpart is necessary to eliminate from consideration factors which might otherwise be presumed to indicate an employment or independent contractor status.

Subpart 3. Independent contractor. The exclusive rights, Item A, means that the worker has contracted to complete a job. This indicates that an independent contractor status is present because an independent contractor is responsible for completion of jobs.

Bargaining for jobs, Item B, indicates an independent contractor status because the worker is responsible for completing a job and for doing so by his or her own methods.

Item C, payment to obtain a result, is similar to Items A and B. It indicates an independent contractor status because the worker is responsible for completion of a job.

Item D, freedom to hire others, means that the worker is not required to render personal services, but is required to complete a job and may obtain the assistance of others to do so. Responsibility for expenses indicates an independent contractor because the worker controls the incurring of expenses, and thus the means and method of performing the work.

Item E, supplying necessary equipment, indicates that the worker has an investment in the business and is thus an independent contractor.

Item F, determining the hours of work, indicates that the worker has control over his own hours and that he is responsible for the hours of his helpers. The worker is the master of his or her own time, which is an attribute of the independent contractor.

Item G, holding oneself out to the public and working for several others, means that there is not an employer who controls the time and work assignments of the cutter or skidder.

Opportunity for profit or loss, Item H, means that the cutter or skidder must use ingenuity, initiative and judgment in conducting the business.

Item I, responsibility for final results, is typical of an independent contractor relationship.

Subpart 4. Employee. Item A, the assignment of work, indicates that the worker is under the control of an employer.

Item B, assignment of workers and orders regarding the kind and size of trees, demonstrates the level of control exercised by the employer.

Item C, inspection by the company foreman, indicates an employment relationship because the workers may be reassigned.

Item D, shifting of crews, indicates an employment relationship because the employer has control over the time and place of performance of the work.

Item E, selecting hours of work, is typical in the industry. However, it does not indicate an independent contractor status because the worker is required to complete a strip within a certain time.

Item F, payment on a piecework basis, is the standard in the industry for employment situations.

5222.0280 SAWMILL OPERATORS.

Subpart 1. Definition. This definition provides a general description of the sawmill operator's job. The description is consistent with the practices in the industry.

Subpart 2. Independent contractor. Item A, a substantial investment, indicates that the operator has a risk of profit or loss and thus has the right to control the means and methods of performing the work.

Item B, the contracts entered into, indicates an independent contractor relationship because the profit or loss depends upon the operator's judgment in entering into contracts which are performable at a profit.

Item C, the use of judgment, experience, and training, indicates an independent contractor who must exercise his or her own initiative and judgment in order to realize a profit on the business.

Item D, the contract and controls, demonstrates that the operator is free to use his own judgment in determining the means and method of performance.

Item E, the right to hire assistants, indicates an independent contractor. Payment and direction of these crews show that the operator is responsible for the means and method of performance.

Item F, the lack of a requirement for doing the work personally, means that the operator is not an employee. Responsibility for completion of a job is an indicator of an independent contractor.

The opportunity for profit or loss, Item G, indicates an independent contractor relationship because the operator must exercise his or her judgment in manipulating assets to realize a profit. In order to do this, the operator must have control of the means and methods of performing the work.

Item H, freedom to work for others, means that an employer does not have control of the operator's time.

Item I, the lack of restriction on activities, indicates that the operator's responsibility is completion of a job. This is present in independent contractor situations.

Subpart 3. Employee. Item A, the purchaser's payment of operating expenses, indicates an employment relationship. The operator's lack of responsibility for expenses indicates a lack of control over the means and method of performing the work.

Item B, the company's payment and firing of the crew, indicates the right of control over the means and methods of the crew's performance of the work. The exercise of this right lies ultimately with the company rather than the sawmill operator.

Item C indicates the level at which control by the employer is exercised over the operator. The operator's hours of work are set, the operator is told the kinds of products to produce from day to day, and he is required to keep records.

The company's moving of the mill, Item D, indicates control by the company over the time and place of performing the work.

Item E, payment on a salary or piecework basis, means that the risk of profit or loss is with the employer rather than with the operator. The operator can to some extent increase his or her pay by increasing output, but the profit potential is limited because the operator is not working with large amounts of capital where the risk of loss is substantial.

The termination requirements, Item F, indicate an employment relationship because the operator is not responsible to complete a job.

Item G, the lack of business expenses, indicates that the operator has no risk of profit or loss and is thus not an independent contractor.

Item H, the lack of freedom to work for others, means that the employer has control over the time of the operator.

PART 5222.0290 TRUCK OWNER-DRIVERS.

Subpart 1. Definition. This definition is adapted from that used by the Department of Economic Security in its rules governing independent contractors. Minn. Rules Part 3315.2200. Consistent with the practice in the industry, leases are included in the definition of owner-drivers.

Subpart 2. Independent contractor. The criteria in this section are those of the rules of the Department of Economic Security. Minn. Rules Part 3315.2200 A.-G. These criteria are used to promote consistency in the handling of workers' compensation and unemployment compensation. An owner-driver who is an independent contractor for workers' compensation purposes should be an independent contractor for unemployment compensation also.

Subpart 3. Employee. Item A, the payment of compensation, indicates that an employer has control over the driver's time and that the driver is essentially treated as an employee.

Item B, fringe benefits, is also an indicator of employment. The driver receives the same benefits as those offered to others who are employees.

Item C, working defined hours, indicates that an employer has control over the driver's time.

Item D, the requirement to perform the work personally, is present in nearly all employment relationships.

Item E, the lack of choice in accepting or rejecting a load, means that the employer has control over the work to be performed by the driver and the driver has no opportunity to exercise judgment with respect to whether a load is profitable.

Item F, the lack of a written contract, is typical of most employment relationships. If there is a written contract it does not specify that the relationship is that of an independent contractor. This provision is necessary to cover those situations where a contract for employment exists.

PART 5222.0291 WASTE MATERIALS HAULERS.

This rule is needed to clarify the treatment of truck owner-drivers who haul waste materials. Because of the similarity between these owner-drivers and those who haul freight, the safe harbors for freight owner-drivers are applicable to the waste materials haulers.

PART 5222.0292 MESSENGERS/COURIERS.

Subpart 1. Definition. To provide consistency with regulatory provisions and to limit applicability, messenger/couriers are defined in terms of the licensing laws.

Subpart 2. Independent Contractor. Item A, vehicle ownership, indicates lack of control over the work and the opportunity for profit.

Item B, freedom to accept or reject jobs, is indicative of lack of control over the worker's time.

Reimbursement on a job basis, Item C, indicates that the worker is hired to complete a job and that an employer does not control the worker's time.

Payment of expenses, Items D and E, mean that the worker has an opportunity for profit based on cost control. The risk of loss indicates lack of control by an employer.

Determining the details of the work, Item F, means lack of control by an employer.

Responsibility for completing a job, Item G, indicates an independent contractor.

Subpart 3. Employee. Item A, work assignment, means the employer has control of the worker's time.

The method of payment, Item B, indicates an on-going relationship of employment.

Reimbursement for expenses, Item C, indicates that the worker does not bear the risk of loss or have an opportunity for profit.

Furnishing the vehicle, Item D, indicates control over the means and methods of performing the work.

Item E, lack of investment risk, indicates an employment relationship.

Item F, insurance, indicates employer responsibility for expenses.

PART 5222.0300 VARIETY ENTERTAINERS.

Subpart 1. Definition. This definition of variety entertainers describes the typical activities of the entertainers in show business.

Subpart 2. Neutral factors. The reference to the contract of the American Federation of Musicians is necessary because of its widespread use in the business and its form language regarding an employment relationship. Because a contract is used in both employment and the independent contractor situations, it is not helpful in distinguishing the status of the relationship, and is thus a neutral factor.

Subpart 3. Independent contractor. Item A, short term engagements for a number of purchasers, indicates that the entertainer is free to work for others and that his or her time is not controlled by a single employer.

Item B, the contract clauses, indicates that an employment relationship is not present because there are no requirements regarding the means and methods of performing the work.

Furnishing music and props, Item C, is similar to the furnishing of tools in other occupations. The fact that the entertainer provides these indicates an independent contractor status.

The act that is not an integral part of the purchaser's business, Item D, indicates an independent contractor relationship. The entertainment is peripheral. If the entertainer's services were vital to the business, the entertainer would be retained on a long-term basis as an employee.

Item E, individual's reputation, indicates an independent contractor status because the entertainer's success is a result of the efforts of the entertainer in performing the work.

Subpart 4. Employee. Item A, supervision, indicates the level of control exercised by the employer. By exercising this control, the employer dictates the means and method of performing of work.

Item B, changing the act to suit the employer, also indicates control. The employer changes the act to suit his or her own purposes.

Item C, integration into the employer's business, is present in employment situations. The entertainer's services are vital to the continuation of the business.

Item D, long-term engagements, indicates employment. Continuing services imply that the relationship is permanent and that the employer has control over the entertainer's time and for whom the entertainer may work.

Item E, prohibition against working for others, means that the employer has control over the entertainer's time. This is present in employment relationships.

Item F, the lack of an opportunity for profit, indicates an employment relationship.

The right to discharge at any time, Item G, indicates that the employer has not engaged the entertainer to complete a specific job.

The prohibition against hiring helpers or substitutes, Item H, indicates that the entertainer's services are personally required and that if helpers or substitutes are necessary, they are the perogative of the employer to hire rather than of the entertainer.

PART 5222.0310 SPORTS OFFICIALS.

Subpart 1. Definition. This definition describes sports officials as referees in organized competition where the referee must be certified. This definition is intended to exclude persons who may referee in games at lower levels of competition. At the lower levels of competition, the sports officials generally are volunteers and are typically uncompensated.

Subpart 2. Independent contractor. The requirement for a written contract, Item A, permits the parties to state their understanding of their relationship. This is helpful in permitting the parties to establish the relationship that they desire.

Item B, payment on a set fee basis, indicates an independent contractor because the official is paid to complete a job, namely, officiating a particular game.

Item C, freedom to reject assignments, is an indicator of an independent contractor status. An employee is required to accept whatever assignments are given him by the employer.

Item D, freedom to work for others, indicates that the employer does not control the time of the sports official.

Subpart 3. Employee. Item A, payment on a time basis, is typical of employment relationships. Payments on a time basis indicate that an employer has the right to control the activities of the employee during the time paid for.

Lack of freedom to reject assignments, Item B, means that which jobs are selected is not the choice of the official. Rather, the official is controlled by an employer.

Lack of freedom to work for others, Item C, indicates an employment relationship because someone other than the official directs the work activities of the official. Independent contractors, on the other hand, typically provide their services to more than one purchaser.

Termination without liability, Item D, evidences lack of responsibility for completing a job. As an employee, the official may quit at anytime without liability for noncompletion.

PART 5222.0311 JOCKEYS.

Subpart 1. Definition. The definition relies on the statutory licensing provisions for consistency and ease of use. Apprentice jockeys are included because they usually use agents to make their business arrangements and their relationships to trainers and owners are virtually indistinguishable from those of jockeys.

Subpart 2. Independent contractor. Use of an agent, Item A, indicates that the jockey works for several purchasers of his or her services. An employee, who generally works for only one person, has no need of an agent.

Freedom to ride the horses of others, Item B, indicates that the jockey may work for others, and that there is not an employer who controls the selection of rides for the jockey.

Item C, freedom to reject calls, means that the jockey may reject requests to ride. Selection of jobs is an attribute of independent contractors; employee jockeys must accept calls from their employer.

Providing the saddle, Item D, is similar to the providing of equipment in other occupations. Furnishing equipment tends to indicate control over the means and methods of performing the work.

Trainer instructions, Item E, are given to all jockeys. Independent contractor jockeys, however, are not bound to follow the instructions of the trainer. Selecting the means and methods of running the race is the jockey's perogative.

Item F, payment on a per race basis, is similar to payment for job completion in other occupations. The jockey is hired to run a race and payment for that race fulfills the contract. As both an employee and an independent contractor jockey would participate in the winner's purse, receipt of a percentage of the winnings is not relevant to determining the jockey's status.

Subpart 3. Employee. Riding only for the employing trainer, Item A, means that the trainer controls the time of the jockey, and the jockey is not free to select his or her own jobs.

Lack of freedom to reject the employer's call, Item B, indicates control by an employer over the jockey's providing of services.

Payment for the saddle, Item C, indicates employment where this critical piece of equipment is provided by the employer.

Trainer instructions, Item D, may not be disregarded by an employee jockey. The trainer's orders regarding the running of the race must be followed. In the racing business, however, the jockey's paramount rule is safety. Thus, trainer's instructions are not followed when the safety of jockeys or horses is threatened.

Payment on a salary basis, Item E, generally indicates an employment relationship. The employer has the right to control the order and means of services on a relatively long-term basis.

PART 5222.0312 TRAINERS.

Subpart 1. Definition. Reliance on the statutory licensing provision provides consistency and ease of use.

Subpart 2. Independent contractor. The method of payment, Item A, indicates that the payment is intended to cover most of the trainer's costs of providing service. The daily fee covers ordinary expenses and provides a return on capital to the trainer.

Item B, payment of expenses, means the trainer does not have to account to an employer for the expenses incurred, and is free to establish the methods and means of work.

Capital investment, Item C, implies the right to control the use of the investment in providing services. The capital investment of trainers is extensive.

Management of the horse, Item D, indicates that the trainer is in control of the means and methods of performance. An owner may occasionally give instructions regarding care of the horse, and the trainer generally complies. If the trainer disagrees, however, he or she may refuse to comply with the order.

Item E, the stabling of horses owned by others, means the trainer works for several owners. This indicates an independent contractor because there is not an owner who has control of the trainer's time.

Subpart 3. Employee. Item A, payment on a salary basis, typically is present in employment relationships. The control of expenses and risk of loss are borne by the owner.

Item B, supplies, means that the trainer has no control over or personal financial interest in expenses, as they are the responsibility of the employer.

Item C, ownership of the stables, indicates lack of capital investment by the trainer.

Item D, a requirement to comply with instructions, eans the trainer's only remedy in the event of disagreement is to quit or be terminated. As the owner generally relies on the experience of the trainer, the presence of this item may be difficult to determine.

Item E, lack of freedom to train horses owned by others, indicates control over the time and provision of services by the trainer.

Item F, hours of work, also indicates control over the trainer by the employer.

PART 5222.0320 GENERAL CRITERIA FOR NONSPECIFIED OCCUPATIONS.

This rule is needed to explain the relationship between the criteria for specific employment as described in the preceding body of these rules and the general criteria for non-specified employment. The general criteria serve two purposes. First, where all of the safe harbor criteria for an employment are not met, the general criteria are used to fill in the gaps. Second, where the specific occupation is not addressed in the rules, the general criteria are used to determine whether the relationship is that of independent contractor or employment.

PART 5222.0330 CONTROL OF METHOD AND MANNER OF PERFORMANCE.

This rule describes the common law control test. The existence of control is generally considered to be the most important factor in determining the nature of the working relationship. Guhlke vs. Roberts Truck Lines, 268 Minn. 141, 128 N.W. 2nd 324 (1964). The factors to be considered in determining control are derived from the rules of the Department of Economic Security, Minn. Rules 3315.1000. It is reasonable to use the Economic Security criteria for two reasons. First, the criteria have been used by that department for several years and have proven workable. Second, use of these criteria promotes consistency of results in determinations by the Department of Labor and Industry and by the Department of Economic Security.

PART 5222.0340 INDEPENDENT CONTRACTOR OR EMPLOYEE, FACTORS TO CONSIDER

This rule is based on the rule of the Department of Economic Security, Minn. Rules 3315.1100. Again, the rules of the Department of Economic Security are used to promote consistency of results and because of their proven workability.

IMPACT ON SMALL BUSINESS

The Commissioner has considered the impact of these rules on small businesses and has determined that the effect will be favorable. The rules will assist small businesses in their planning, and in determining whether services are provided by employees or by independent contractors. As required by Minn. Stat. § 14.115, subd. 2, the Commissioner has also considered methods for reducing the impact of the rules on small business. The rules do not establish compliance or reporting requirements, or schedules or deadlines for compliance or reporting requirements. Nor do they establish design or operational standards. The methods set forth in Minn. Stat. § 14.115, subd. 2 a.-d., are thus not applicable to this proceeding.

The Commissioner has considered exempting small businesses from all requirements of the rule pursuant to Minn. Stat. § 14.115, subd. 2e. An exemption is not appropriate. A large percentage of the labor force in this state is employed by small businesses. These small businesses can benefit from the criteria established by these rules in their business planning. Further, exempting small businesses would defeat one of the purposes of the rules of assisting in the disposition of litigation after an injury has occurred. It would not be reasonable to provide that the rules do not apply where the purchaser of these services is a small business.

FISCAL IMPACT ON LOCAL PUBLIC BODIES

The Commissioner has considered the fiscal impact of these rules on local public bodies pursuant to Minn. Stat. § 14.11, subd. 1, 1984, and has found none. No additional financial burdens are placed on local public bodies, as the adoption of these rules will not require the expenditure of public monies by local public bodies.

STATE OF MINNESOTA
DEPARTMENT OF LABOR AND INDUSTRY
WORKERS' COMPENSATION DIVISION

In the matter of the Proposed Adoption by the Minnesota Department of Labor and Industry, Workers' Compensation Division, of Rules Governing Independent Contractors.

CERTIFICATE OF COMPLIANCE WITH RULEMAKING PROCEDURES

I hereby certify that I have examined the rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures; the Administrative Procedures Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed.

Harold W. Schultz, II.
Special Assistant
Attorney General

Dated: 2-4-86

STATE OF MINNESOTA

DEPARTMENT OF LABOR AND INDUSTRY

WORKERS' COMPENSATION DIVISION

In the Matter of the Proposed Adoption by the Minnesota Department of Labor and Industry, Workers' Compensation Division, of Rules Governing Independent Contractors

NOTICE OF SUBMISSION OF RULE ADOPTED WITHOUT PUBLIC HEARING TO THE ATTORNEY GENERAL

Pursuant to your request and in accordance with Minnesota Statutes, section 14.26:

PLEASE TAKE NOTICE that the above-captioned rules as adopted have been submitted to the Office of the Attorney General on the date of this notice, February 4, 1986, for review as to legality and form to the extent form relates to legality. The proposed rule, the rule as adopted, all the notices, the Statement of Need and Reasonableness, all written comments and requests for a hearing received, and other required documents also have been submitted to the Attorney General.

The proposed rule which was published in the State Register and made available to the public on December 23, 1985, has been modified. A free copy of the rule as modified as well as the findings of fact, conclusions, and order explaining the amendments and adopting the rule is available upon request from the Department of Labor and Industry, (612)296-2342.

The rule must be approved or disapproved by the Attorney General within 14 calendar days of the date of submission to the attorney general. You may submit written comments to the attorney general on the legality of the rule. Any written comments must be submitted within eight calendar days of the date of submission of the rule to the Attorney General. Your comments must address only the issue of legality of the rule or the legality of the specific parts or subparts of the rule. Your comments must be directed to:

The Office of the Attorney General
204 Administration Building
50 Sherburne Avenue
Saint Paul, Minnesota 55155
Telephone Number: (612)296-1288

Any written comments submitted to the Attorney General must be submitted simultaneously to:

Steve Keefe, Commissioner
Department of Labor and Industry
444 Lafayette Road
Saint Paul, Minnesota 55101
Telephone Number: (612)296-2342

Steve Keefe
Steve Keefe
Commissioner of Labor and Industry

Dated: February 4, 1986

STATE OF MINNESOTA

DEPARTMENT OF LABOR AND INDUSTRY

WORKERS' COMPENSATION DIVISION

In the Matter of the Proposed Adoption by the Minnesota Department of Labor and Industry, Workers' Compensation Division, of Rules Governing Independent Contractors

AFFIDAVIT OF MAILING THE NOTICE OF SUBMISSION

STATE OF MINNESOTA)
)ss.
COUNTY OF RAMSEY)

Carla R. Mitrovich, being first duly sworn, deposes and says:

That on the 4th day of February, 1986, in the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Submission to the Attorney General by depositing in the State of Minnesota Central Mail System for United States mailing a copy thereof, with postage prepaid, to: Ray McMillan, Business Agent, Carpenters' Local 361, 2002 London Road, Duluth, Minnesota 55812.

Carla R. Mitrovich

Subscribed and sworn to before me
this 4 day of February, 1986.

Rosemary L. LaRue

ROSEMARY L. LARUE
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES NOVEMBER 11, 1990

To: Marty
Date: 2.11.86
Re: Labor + Industry — Workers' Compensation — Independent Contractor.

Notice of Rulemaking

The Rules were not mailed with the Notice. The description of the nature and effect of the Rule is minimal.
but is a "description" - ok minimal but acceptable

Rules as Adopted

These rules contain many instances of quasi-rules — statements of fact or examples which help explain the particular section. Example: page 14, line 3. In the interest of full understanding of the rules, we could accept the language.
— yep -- also there are others

5222.0150

0.19, line 1-3 There appears to be missing punctuation; a colon after "... 5222.00180" might be appropriate.
grammer - not illegal

5222.0311

0.44, line 15 "of" should be "at"
grammer not illegal

5222.0330, subp 5

0.47, line 23 The clause starting "especially when" appears redundant and is confusing.
grammer - not illegal

SF-00006-03

STATE OF MINNESOTA

DEPARTMENT LABOR AND INDUSTRY

Office Memorandum

TO: Martha J. Casserly
Special Assistant Attorney General

DATE: 2/4/86

RECEIVED
FEB 04 1986
ATTORNEY GENERAL'S
ADMINISTRATIVE AGENCIES

FROM: Joan Volz
Chief Counsel

PHONE: 7-4795

SUBJECT: **ADOPTION OF RULES GOVERNING INDEPENDENT CONTRACTORS**

The Department of Labor and Industry has adopted the above-captioned rules pursuant to its authority under Minn. Stat. §§ 176.041, subd. 1 and 176.83, subd. 11 (1984). Having received one request for a public hearing, the Department proceeded under the noncontroversial rulemaking provisions, Minn. Stat. § 14.21-14.28 (1984). The Department is now submitting the amendments to the Attorney General for approval pursuant to Minn. Stat. § 14.26.

As the following documents demonstrate, the Department has fully complied with all requirements imposed by law or rule:

1. An Order for Publication and for Notice of Intent to Adopt Rules Without a Public Hearing was issued by the commissioner on December 9, 1985. It directed the publication of the Notice in the State Register and the mailing of the Notice to all persons on the list maintained by the agency.

2. A Certificate verifying the accuracy and completeness of the agency's mailing list of persons and groups requesting notice of proposed adoption of amendments was prepared on December 19, 1985.

3. An Affidavit of Mailing the Notice of Intent to Adopt Rules without a Public Hearing on December 19, 1985 to persons and groups on the certified list described in paragraph two was executed.

4. The Notice of Intent to Adopt Rules Without a Public Hearing was published in the State Register at 10 S.R. 1404 on December 23, 1985 together with the rules as proposed. The Notice contained all of the elements required by Minn. Rules pt. 2000.0400, subp. 2.

5. A Statement of Need and Reasonableness describing the reasons, arguments, and evidence supporting a finding of need for and reasonableness of the proposed rules was drafted and made available to the public by December 23, 1985.

6. One request for hearing and comments from four persons were received by the Department during the 30 days ending January 22, 1986.

7. Findings of Fact were issued by the Commissioner on January 30, 1986. These findings document the Department's compliance with all requirements of law and rule and the need and reasonableness of the proposed rules.

8. An Order Adopting Rules was issued by the Commissioner on January 30, 1986. It states that proper notice of the proposed rulemaking was effected, no requests for public hearing were received, and that the rules are needed and reasonable.

9. A notice and certificate verifying that one person was notified of the submission of these rules to the Attorney General was completed on February 4, 1986.

10. A Certificate of Compliance with Rulemaking Procedures was signed on February 4, 1986 by Harold Schultz, Special Assistant Attorney General.

Please call me or Hap Schultz if you have any questions regarding these rules.

JV/crm