STATE OF MINNESOTA
LABOR STANDARDS DIVISION

In the matter of the proposed adoption of amendments to Rules governing the Fair Labor Standards and Child Labor Standards

STATEMENT OF NEED AND REASONABLENESS

INTRODUCTION

The proposed rules are amendments to existing rules of the Department of Labor and Industry concerning enforcement determinations under the Fair Labor Standards Act (FLSA), Minnesota Statutes §§ 177.21 through 177.35 (1984 and Supp. 1985) and a reporting requirement under the Child Labor Standards Act (CLSA), Minnesota Statutes §§ 181A.01 - 181A.12 (1984 and Supp. 1985). In 1974 the FLSA was established to provide and safeguard overtime and minimum wage standards for workers and the CLSA was established to coordinate the employment of minors with school and safety considerations. Both the FLSA and the CLSA were modeled from the Federal Fair Labor Standards Act of 1938.

The existing rules were originally adopted in 1974 and 1977. Since that time, there have been several legislative changes to the FLSA, and policy developments which require clarification, interpretation and definition of terms. With respect to the FLSA, the existing rules do not fully reflect the changes, thus hampering the department's enforcement efforts. The proposed amendments are intended to update the rules for the enforcement purpose and to clarify the rule for employers' ease of compliance. Since the FLSA was modeled to a great extent on the Federal Fair Labor Standards Act of 1938, many of the definitions and interpretations are derived from the Federal Fair Labor Standards Act and Regulations and are well-accepted concepts. Some of the amendments are proposed to recognize changes in employment practices. The single amendment to the child labor rules deletes a reporting requirement that has proven ineffective.

The proposed amendments have been reviewed, revised, and approved by the Labor Standards Advisory Council. The Labor Standards Advisory Council was appointed for the purpose of consulting about administrative rules as required by Minn. Stat. § 177.28, subd. 2. The Labor Standards Advisory Council includes representatives for employees, employers, and the public.

Minn. Rule § 5200.0010/Proof of Minor's Age

This proposed amendment removes the department's obligation to supply forms for the purpose of verifying the age of a minor. Minnesota Statute § 181A.06 (1984) requires schools to issue age certificates to minors attending such schools at the minor's request. The statute does not require the department

to furnish the forms or t[redacted] school to use a form provi[redacted] by the department.

These forms were provided at no cost by the department as a courtesy. Due to budget restrictions and the increased expenses in enforcing the FLSA, this printing expense is no longer feasible. Forms are available from the Documents Section of the Department of Administration for a small fee, or schools have the option of duplicating or preparing their own forms (see also 5200.0970).

The proposed amendment makes reference to penalties required by legislative additions to Minn. Stat. § 181A.12. These penalties were added in 1983 and 1985. Laws of 1983, Ch. 301, Sec. 154 and Laws of 1985, Ch. 13, Sec. 295. The added reference in Part 5200.0010 more fully states the consequence for failure to provide proof of the ages of minors.

Minn. Rule § 5200.0030/Handicapped Workers

The proposed rule expands the permits accepted by the department to allow the payment of a subminimum wage rate to handicapped workers. The existing rule is divided into subparts for ease of use.

Subpart 1.

This addition, referring to the new subpart 4, is an editorial change. The proposed amendment defines performance for purpose of determining the appropriate subminimum wage rate as required under subpart. Time study is used because it is the most common method of measuring comparable performance in sheltered workshop settings and is also the method used under federal handicap worker regulations.

Subpart 4

The proposed amendment recognizes an on-going informal agreement with the Federal Wage and Hour Division of the U.S. Department of Labor to accept the federal permits in lieu of state permits. Recognition of federal permits eliminates duplication for the employer. Permits issued under 29 CFR 524 allow subminimum wage rates of not less than 50% of the minimum wage. Permits issued under 29 CFR 525 allow subminimum rates below 50% of the minimum wage in sheltered workshops or by special certificate.

The federal permits reflect Minnesota's substantive standards. The department recognizes the trend to place more handicapped workers in the community. Thus the proposed rule allows the commissioner to grant special permits when the worker would otherwise be in a sheltered workshop, for subminimum wage rates of less than 50% of the minimum wage. This permit is similar to the special permits issued under federal regulation 29 CFR 525.

§ 5200.0060/MEAL ALLOWANCE

This rule was originally established for the benefit of the employer to permit meal credit towards the minimum wage, pursuant to Minnesota Statutes § 177.28,

subd. 3. Experience of the department in enforcement of this rule indicates that some employers have not clearly understood the importance of the recordkeeping requirement. At times, employers have not made the record until well after the meal was accepted, and therefore, the record was of questionable accuracy. Further, some of the employers have felt they could take the meal credit even without the record. The proposed amendment clarifies the recordkeeping requirement for meal credit and will improve compliance with the rule by emphasizing that the records must be kept, and that the records must be kept before meal credit is taken. Since meal credit is taken each pay period, the records will be kept current. In addition, the amendment makes clearer that the department can deny meal credit if the record of the meal was not kept.

The change on the meal allowance from a dollar amount to a percentage of the adult minimum wage eliminates the need for constant rule changes when the minimum wage is changed. When this rule was originally established in January 1974, the meal credit was ninety cents and the minimum wage was $1.80. The minimum wage was raised to $2.30 in September of 1977 at which time the meal credit was raised to $1.15. The meal credit has not been changed since, but the minimum wage has risen to $3.35. Sixty percent of the adult minimum wage rate per meal was recommended by the Labor Standards Advisory Council.

§ 5200.0070/LODGING CREDIT

Minn. Stat. § 177.28, subd. 3 (1984) authorizes the commissioner to adopt rules regarding lodging furnished by an employer. The proposed amendment revises the existing rule to prevent abuses observed by the commissioner in conducting Fair Labor Standards Act investigations. Some of the abuses violate the legislative policy set forth in Minn. Stat. §177.22 (1984). In many instances, an employee is required to accept lodging owned or controlled by the employer, because it is either a condition of employment or because no other economically feasible lodging is available within a reasonable distance. Some employers have taken advantage of this and applied the lodging credit in a manner that results in the employee receiving no pay because the credit exceeds the minimum wage for the hours worked. This permits the employer free labor in some cases and does not safeguard adequate standards of living, nor does it sustain purchasing power as delineated in Minn. Stat. § 177.22 (1984).

Subpart 1:

This new subpart provides that the employer may recover the cost of lodging furnished as a condition of employment, but only in accordance with the rules that follow. This subpart is needed to prevent employers from taking the employee's entire income as lodging credit where the employee has no choice but to accept lodging provided by the employer.

Subpart 2:

The proposed amendment ties the lodging allowance to the minimum wage. It eliminates the need for a rule change if the minimum wage is changed. When this rule was originally established in January 1974, the lodging credit was $1.15 and the minimum wage was $1.80. The minimum wage was raised to $2.30

in September of 1977 at which time the lodging credit was raised to $1.50. The lodging credit has not been changed since, but the minimum wage has risen to $3.35. Seventy five percent of the adult minimum wage rate was recommended by the Labor Standards Advisory Council.

Subpart 3:

In the enforcement of the FLSA, the commissioner has noted several instances of employers taking full market value of an apartment for each employee living in that apartment. This practice violates the intent of Minn. Stat. § 177.22 (1984) which is to protect and safeguard overtime and minimum wage standards for workers. Employers should not be permitted more credit than the fair market value of the apartment nor should an employee be required to pay for more than their fair share of the apartment.

The rule is expanded to allow the employer to apply the lodging credit based on an oral lease rather than only a written lease. The written lease was used to establish the value of the lodging for purposes of applying the credit. However, it is possible to establish the value of lodging without a written lease. Many tenancy agreements are not in writing and the commissioner has found the rule's limitation to written tenancies unduly restrictive and unnecessary for the protection of employees once the value of the lodging is established.

Subpart 4:

The proposed amendment limits the lodging credit allowed towards the minimum wage for seasonal workers. The employer is restricted to a daily lodging allowance since the residence is not permanent. It is not uncommon for a college student to be employed by a resort on a seasonal basis. In this instance, the lodging may be the chief place of residence of the employee for the season with the student returning to college in the off season. If the fair market value of the lodging were permitted, the employee might not receive any money. Such a result violates the intent of Minnesota Statute § 177.22 (1984). It would also be unfair to the college student and inconsistent from the standpoint that other employees would have another residence and therefore, would fall under subpart 2. Therefore, the rule as proposed, treats all seasonal workers similarly and fairly concerning lodging allowances.

5200.0080/GRATUITIES/TIPS

The proposed rule deletes duplication of statutory language, renumbers the subparts, and defines terms for the purpose of determining compliance with statutes relating to gratuities.

Subpart 1

Subpart 1 of the existing rule is deleted because the language duplicates the statutes.

Subpart 3

The proposed amendment clarifies the conditions to be met before tip credit may be claimed as required under Minn. Stat. § 177.28, subd. 4 (Supp. 1985).

(See Laws of 1985, Ch. [illegible], Sec. 280.) The fact that an employee may receive and report more tips than needed for the tip credit does not allow an employer to exceed the maximum credit set by Minn. Stat. § 177.28, subd. 4, as some employers have interpreted the rule to permit. The rule cannot, of course, grant greater allowances than the statute provides. The added language is necessary to clarify the maximum credit permitted.

Subpart 4

The proposed rule is needed to change "another employee" to "indirect service employee" to be consistent with subpart 6. See subpart 6 for an explanation of the need and reasonableness of this rule. The sentence deleted duplicates the statute.

Subpart 4a

The proposed rule defines obligatory charges under Minn. Stat. § 177.23, subd. 9 (1984). The rule is needed to clarify for employers what charges may be reasonably construed as money intended for employees as a gratuity in the absence of clear and conspicuous notice that the obligatory charge is not a gratuity. "Service charge," "tip," gratuity," and "surcharge" were selected as examples of obligatory charges based on discussions with the Labor Standards Advisory Council.

Subpart 4b

Minn. Stat. § 177.23, Subd. 9 (1984) allows an employer to keep obligatory charges only if "clear and conspicuous" notice is given that the obligatory charge is not a gratuity. The proposed rule is needed to define what constitutes clear and conspicuous notice. The type sizes selected are large enough to read and are in common use whether commercially printed, typed, or hand-written.

Subpart 5

This rule is repealed because it failed to clarify obligatory charges and notice. Subparts 4a and 4b replace this subpart. Therefore, subd. 5 is now unnecessary.

Subpart 6

Rules adopted subsequent to rules hearings in 1974 and 1977 stated that only the individual providing the "main" service was eligible for tip credit. The existing rule does not recognize the possibility that more than one individual may provide the "main" service. As an example, it is not uncommon to be served by a cocktail waitperson in the restaurant bar and a food waitperson with one bill for both. Under the existing rule, the tip in this case would go to one waitperson and the other waitperson would only get a share of the tip, if the first waitperson voluntarily chose to share. The proposed rule is reasonable because it restates the concept of "main" by defining those individuals who provide the "main" service as "direct" service employees, and by defining those individuals who do not customarily provide the "main" service as "indirect" service employees. Thus the proposed rule assumes that there will be occasions where the customer may expect that the tips would be divided among the direct service employees. (See subp. 8 for further explanation of the need and reasonableness of this rule.)

Subpart 7

The proposed rule is needed to change "service employee" to "direct service employee" to be consistent with subpart 6 defining service employees. The new clause is needed to clarify that credit is based on tips received and reported on tip statements. Thus credit cannot be taken, for tips presented via credit card charges, until the tip is received. This procedure protects the employee in the event that the gratuity is never actually received.

Subpart 8

Minn. Stat. § 177.24, subd. 3(1984) prohibits any employer participation in the agreement to share tips. The proposed rule is needed to limit the definition of "participation" and allow the division of tips to direct service employees when the services of the employees are combined on one bill. This rule is reasonable because it acknowledges the practices of some restaurants to have more than one direct service employee providing service to the same customer.

Subpart 9

The existing rule is no longer necessary after phase out of tip credit in 1988. Other subparts were changed to clarify when credit may be claimed (see subparts 1 and 2).

5200.0090/DEDUCTIONS

Subpart 1

In 1984 and 1985, Minn. Stat. § 177.24 was amended to include prohibitions against deductions for rental of uniforms, consumable supplies and travel expenses. The definitions of consumable supplies and travel expenses are necessary to clarify the type of materials to be considered consumable and to clarify the meaning of travel expenses. The rule protects the employees from inconsistent and unreasonable interpretations by employers which would reduce available income to less than the minimum wage. It is a common practice of cosmetology shops to deduct the cost of supplies from employee commissions. This definition ensures that the employer does not get credit toward minimum wage for these supplies since the employee receives no benefit from the supplies. If the employee is required to pay for consumable supplies or travel expenses out of their own pocket, this in effect brings them below the minimum wage required by Minn. Stat. § 177.24 (Supp 1985). The rule properly places the burden of the cost of operating the business on the employer.

The sentence "these are considered matters separate from minimum wage" is deleted because it has no significance to the rule or the statute. The definition of "uniform" is deleted because it conflicts with the amendments to Minn. Stat. § 177.24, subd. 4(a) (See 1984 Laws of Minnesota, Chapter 628, article 4 and 1985 Laws of Minnesota, Chapter 13, Sections 276-278). The expansion of the list of shortages on losses that may not be deducted from an employee's minimum wage was made for clarification. "Other damage" and "other errors" were added to clarify that the list is not limited to the items specifically mentioned.

The broader language accomplishes the intent of Section 177.24 that the employee not be charged for ordinary business expenses of the employer caused by employee error or conduct of the customer resulting in losses.

Subpart 2

The proposed rule defines "indirect deduction" for purpose of Minn. Stat. § 177.24, subds. 2,4,5, (1984) and Subpart 1 of this rule. This rule is needed to prevent employers from requiring employees to sign wage checks back to them, to pay for items out of pocket, or purchase items directly from vendors in an attempt to circumvent the laws protecting employees from certain deductions. Without this definition, an employer can easily manipulate the meaning of "indirect" by saying that payment out of pocket, payment from tips, signing back of wage checks, or direct purchase of items from a vendor is allowed, because it is not an indirect deduction from wages. This rule supports the legislative intent that employees should not have to pay for items that the employer requires as a condition of employment where the items are of no personal use to the employee, particularly where minimum wage or uniform costs in excess of $50 are involved.

§ 5200.0120/HOURS WORKED

The proposed amendments to this section clarify the distinction between working hours versus non working hours. Both employers and employees benefit by this amendment because it sets out more specific guidelines for determining actual hours of work. The proposed amendments are derived from federal regulation (29 CFR 785) because the MFLSA is modeled after the federal act.

Subpart 1

This amendment emphasizes the requirement of minimum wages for all hours worked. The amendment also clarifies waiting time, whereby an employer engages an employee to wait on the premises of the employer until work is available. Where an employee is required to be on the premises for the employer's purpose, it is reasonable for the employer to pay for this service. The current rule implies that payment must be made for hours worked, but does not explicitly state that requirement. The amendment positively states the obligation.

Subpart 2

This amendment distinguishes or defines when on-call time is counted as hours worked (See 29 CFR 785.17). On-call time that meets the definition of hours worked must be paid at a rate of not less than the minimum wage. For on-call time which is not considered hours worked, the employer would not be required to pay this type of on-call time, nor would the employer be required to keep a record. The rule is needed to clarify to both employers and employees when an employee is entitled to wages, particularly when the employee is merely available, but not actually engaged in work. The "premises" distinction contained in the proposed rule is a reasonable means of identifying whether the employee is actually free to pursue personal activities or is primarily performing services for the employer.

Subpart 3

Off-duty periods are defined to resolve questions of hours worked for employees who may leave the work site when work is not available. This is to prevent meritless claims for wages during periods when an employee was not required to remain on the premises and was not performing duties.

Subpart 4

Unpaid meal periods are defined to be consistent with federal regulations (29 CFR 785.19). The proposed rule does not require an employer to provide a meal period, but does allow an employer to deduct meal periods provided.

Conformance with federal regulations simplifies procedures for employers as discussed in part 5200.0121 below.

5200.0121/SLEEPING TIME AND CERTAIN OTHER ACTIVITIES

Since the FLSA was modeled after the Federal Fair Labor Standards Act, these proposed rules are derived from federal regulations (29 CFR 785.21, 785.22, and 785.23). Since many Minnesota employers are subject to both state and federal laws on the minimum wage and overtime, rules derived from the federal regulation (whenever possible) simplify the requirements that employers must follow to be in compliance with both state and federal laws.

Subpart 1

This proposed rule defines hours worked when the duty is less than 24 hours. The rule clarifies that even though an employee may be allowed to sleep during a work shift, all hours for that shift must be paid. The rule is reasonable because there are some occupations where the employee's attendance is the duty.

Subpart 2

This proposed rule is needed to allow an employer and employee to agree to exclude sleep time when the employee is required to be on duty for 24 hours or more. This is reasonable for those situations in which the employees must remain on the premise for 24 hours or more at a time because it allows the employer and employee to enter into an agreement on the hours of work while still fulfilling the intent of Minn. Stat. § 177.22 to safeguard and protect wage standards. The exclusion does not apply if the employee's duty results in interruptions which prevent the employee from getting at least five hours of sleep. In such cases, the employee is giving up personal confort and needs for the employer's benefit and should be compensated for the loss. The five hours need not be consecutive. Five hours is the standard used in federal regulations and is accepted as a reasonable minimum period of sleep.

Subpart 3

This proposed rule is needed to allow the employer to exclude an employee's free time and sleep time when the employee resides on the premise of the employer. The rule is reasonable because an employee who lives on the premises

cannot be presumed to be working at all times. Since the employer's premises is also the employee's home, the employee has periods in which he is free to pursue individual pursuits such as housekeeping, entertaining friends, hobbies, etc., unlike the employee who is required to remain on the employer's premises, such as a store clerk.

5200.0211/SALARY

Subpart 1

This proposed amendment defines salary for the purpose of determining when employees are exempt from the act as either bona fide executive, administrative, professional employees or as agricultural workers. The workweek is the standard used for determining compliance with the FLSA as provided by Minn. Rules, part 5200.0170. Thus, the predetermined amount of salary must be for a period of not less than a workweek. To allow an employer to deduct for lack of work in a given day in effect allows the employer to pay by the hour and thus would defeat the purpose of requiring a salary as part of the test to determine when an employee is exempt. An employer does not lose the exemption unless deductions reduce the salary below the minimum amount set by Minn. Stat. § 177.23, subd. 7, clause 2 (1984) or Minn. Rules, parts §§5200.0190 to 5200.0210 in that workweek. This provision clarifies the claculation method for salaried employees.

Subpart 2

The rule is needed and reasonable to clarify that an employer is not obligated to pay for complete weeks in which the employee does not work regardless of the reason. The provision prevents meritless claims from employees for payment during weeks in which no work is available or the employee is unable to work.

5200.0221/INDEPENDENT CONTRACTORS

The proposed rule is needed to determine the exclusion of certain workers from the act who are not specifically exempted under Minn. Stat. § 177.23, subd. 7. The present departmental rules for independent contractors, which are also used by the Department of Jobs and Training, are incorporated to provide consistency for Minnesota employers in determining employment status. However, the emphasis on control has been specifically rejected in the FLSA context. See Rutherford Food Corp. v McComb, 331 U.S. 722 (1947) and United States v Silk, 331 U.S. 704 (1947). The proposed rule thus de-emphasizes the weight given to control. Federal FLSA case law looks instead to the economic dependence of the workers on the business to which service is provided. See cases cited above.

5200.0241/**STAFF MEMBER**

The proposed amendment defines staff member of a children's camp for purposes of exemption from the act. The purpose of this amendment is to distinguish camp counselors whose hours are very difficult to determine and who may work around the clock with campers, as opposed to maintenance employees, cooks, and other permanent employees. The definition excludes maintenance employees,

cooks, and other permanent employees because their hours and duties are not so varied and irregular as to make it impractical to comply with the act.

5200.0242/SEASONAL

The proposed amendment is derived from federal statutes (29 U.S.C. 201, Sec. 13(a)(3)) and defines "seasonal" for purposes of exempting certain workers from the act and for determining the amount of lodging credit allowed.

5200.0250/MANDATORY PAYMENT OF WAGES

This rule is repealed because it repeats statutory language in Minn. Stat. § 181.101 (1984).

5200.0251/PAYMENT OF BACK WAGES AND/OR GRATUITIES TO MISSING EMPLOYEES

The proposed rule provides that the department will report sums deposited with the department to the Unclaimed Property Division rather than return the sums to the employer. The proposed rule complies with the requirements of Minn. Stat. § 354.41 (1984) on unclaimed property. As indicated by the policy underlying Minn. Stat. § 354.41 (1984), the employer should not benefit from the department's inability to locate former employees. The rule reflects the department's current practice of depositing the checks in an escrow account until the individuals can be located. If the individual is not found, the sums are reported to the Unclaimed Property Division. This rule is reasonable because it complies with the requirements of Minn. Stat. § 354.41 (1984) on unclaimed property.

5200.0260/AGRICULTURE

The proposed rule is derived from federal regulations (29 CFR 29 780). The rule is needed to define "agriculture" for purposes of exempting agricultural workers from the FLSA as provided by Minnesota Statute 177.23, subd. 7 (1984). The rule includes as "agriculture" those activities which are incidental to the farming operation and processing of the farmer's own products. Activities which are performed on a farm, but are more akin to industry than farming, are not included. See Holtville Alfalfa Mills v Wyatt, 230 F. 2d 398, Maneja v. Waialua, 349 U.S. 254, and Mitchell v Budd, 350 U.S. 473. Greenhouses are excluded based on the Minnesota Supreme Court Decision, Christgua v Woodlawn Cemetery Assoc., 208 Mn. 263, 293 N.W. 619 (1940), which found that greenhouses were more akin to industry than agriculture. Outside services hired by the farmer are also excluded, since the service is not performd by the farmer's workers even though the work is peformed on the farm. Also, Minn. Stat. § 177.25, subd. 4 (1984) provides a separate exemption for construction of farm silos. Services performed for others are also excluded because, while these services may appear to be agricultural because they involve animals or land, they do not involve the farmer's own products.

5200.0261/SPECIFIED

The proposed rule defines "specified" for purposes of Minn. Stat. § 177.23, subd. 7(1), which exempts up to two "specified" workers employed in agriculture and paid a salary. The intent of this exemption is to allow up to two workers to be exempt from the MFLSA. The workweek is the standard used for determining compliance with the FLSA as provided by Minn. Rules, part 5200.0170. The burden of proof is on the employer, because Minn. Stat. §177.30 (1984) requires an employer to keep information necessary for the enforcement of the FLSA.

5200.0262/FARMING UNIT OR OPERATION

The purpose of this rule is to define "farm unit" and "operation" to clarify the application of the exemption under Minn. Stat. § 177.23, Subd. 7(1). The rule is consistent with the customary concept of the small farm to which the exemption was intended to apply. It is needed to prevent abuse of the exemption by larger farming operations.

5200.0270/FAIR

Minn. Stat. § 177.23, subd. 7, clause 13 (1984), exempts seasonal workers of fairs from the FLSA. The proposed rule is needed to clarify that companies who are in the business of holding trade shows and conventions are subject to the FLSA. The department during some of its investigations found that some trade shows and conventions thought of themselves as a fair. As these shows are full time non-seasonal businesses, exempting them from the FLSA would be inconsistent with the intent and the specific language of the act. Minn. Stat. §177.23, subd. 7, clause 13 (1984) exempts "seasonal" carnival, circus, and fair employees, not those who are not seasonal workers.

5200.0970/MONTHLY REPORT ON EMPLOYMENT AND AGE CERTIFICATES

The repeal of this rule deletes a reporting requirement placed on the schools. This was a duplication of effort, since the employer receives a copy of the age certificate and is required to keep the age certificate as part of the employment records under Minn. Stat. § 181A.06, subd. 4 (1984). For enforcement purposes, the department needs only to verify that the employer's records include proof of age including age certificates.

IMPACT ON SMALL BUSINESS

Most firms subject to the FLSA and the CLSA are small businesses. Pursuant to Minnesota Statute 14.115, subdivision 2, the department has considered the impact of the proposed rules on small business and concludes that the rules have no greater effect on small business than that already placed on small business by the legislature in the FLSA and CLSA.

The rules do not add any compliance or reporting requirements to those contained in the statute. In fact, the repeal of Minnesota Rule 5200.0970 lessens reporting requirements.

There are no schedules or deadlines in these rules.

The rules are intended to simplify compliance for all employers. Most of the definitions clarify when a worker is not an employee for purposes of the Minnesota Fair Labor Standards Act.

There are no operations standards required in the proposed rules.

The statute does not specifically authorize exemptions for small businesses, but many of the exemptions benefit small businesses. The exemptions provided

by statutes and clarified in these proposed rules apply to individuals who may be employed in a business of any size. For example, the agricultural exemption aids the small farmer by allowing an exemption for two employees, but also aids the larger farm by providing another exemption for more than two employees. The proposed rules clarify when the exemptions apply to an individual so that all business owners including small business owners may be better informed of their legal rights and obligations.

These rules were developed through consultation with an advisory council as required by Minn. Stat. §177.28 (1984). The advisory council members included representatives of small businesses: The Minnesota Motel Association, Minnesota Restaurant, Hotel and Resort Association, and the Minnesota Retail Merchants Association.

FISCAL IMPACT ON LOCAL PUBLIC BODIES.

The department has considered the fiscal impact of these rules on local public bodies pursuant to Minnesota Statute § 14.11, subdivision 1 (1984) and has found none. These rules place no additional financial burden on local public bodies.