Unemployment Insurance
Minnesota

February 19, 2014

Legislative Reference Library
645 State Office Building
100 Constitution Avenue
St. Paul, Minnesota 55155

Re: In the Matter of the Proposed Rules of the Department of Employment & Economic Development Relating to Unemployment Insurance; Modifying Appeals, Employer Records, and Worker Status Provisions, Revisor's ID Number 4207

Dear Librarian:

The Minnesota Department of Employment & Economic Development intends to amend rules related to unemployment insurance appeals, employer records, and worker status provisions. We plan to publish a Dual Notice in the February 24, 2014 State Register.

The Department has prepared a Statement of Need and Reasonableness. As required by Minnesota Statutes, sections 14.131 and 14.23, the Department is sending the Library an electronic copy of the Statement of Need and Reasonableness at the same time we are mailing our Notice of Intent to Adopt Rules.

If you have questions, please contact me at 651-259-7269

Sincerely,

Christine E. Hinrichs
Staff Attorney

Enclosure: Statement of Need and Reasonableness

**Department of Employment and Economic Development**
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STATE OF MINNESOTA
DEPARTMENT OF EMPLOYMENT & ECONOMIC DEVELOPMENT

**In the Matter of the Proposed Adoption Of Permanent Rules Relating to Unemployment Insurance; Modifying Appeals, Employer Records, and Worker Status Provisions**

**STATEMENT OF NEED AND REASONABLENESS**

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## INTRODUCTION

The Department of Employment & Economic Development is charged with the responsibility of administering the state's unemployment insurance program. The express purpose of the Minnesota unemployment insurance program is to "provide[] workers who are unemployed through no fault of their own a temporary partial wage replacement to assist the unemployed worker to become reemployed." Minnesota Statutes, section 268.03 (2012). Minnesota's unemployment insurance program is also regulated, in part, by standards promulgated by the federal government under the Social Security Act, which requires that the Department provide participants a fair hearing. The United States Department of Labor provides state agencies with federal funding for program administration, including funds needed to conduct evidentiary hearings. The funding is contingent on state compliance with qualitative and quantitative requirements related to efficient and timely hearings. Under these federal requirements, 60 percent of all cases must be heard and decided within 30 days of the date of the appeal, and 75 percent of all cases must be heard and decided within 45 days of the date of the appeal.

To keep pace with the growing need for unemployment insurance, to ensure that the Department meets federal-funding standards, and to ensure that applicants and employers receive timely access to the Department has turned more increasingly to an automated system. As of 2013, 85 percent of all applicant transactions are conducted online, and 95 percent of all employer transactions are conducted online. This includes employers reporting wage detail and paying unemployment taxes, individuals filing applications for unemployment benefits, and applicants making continued weekly requests for benefits. In a single week in December 2013, 79,196 individuals made a weekly request for unemployment benefits. (*See* Appendix II.) This same week, the UI program issued 4,916 determinations of eligibility, and 611 appeals were also filed that had to be heard and decided by unemployment law judges. (*See* Appendix II.) In 2013, the unemployment law judges will handle over 25,000 hearings.

All of this activity in a single week requires an increased use of technology, which has not yet been reflected in the UI administrative rules. The volume of appeals handled on a weekly

basis also led the Department to explore ways of ensuring fairness while expediting the timeline from appeal to decision.

The Department initiated these rule amendments to achieve four primary goals. The first goal was to achieve consistency between the rules and the relevant governing statutes. Several portions of the administrative rules no longer reflect accurate law.

The second goal was to update the rules in light of the Department's expanded use of its online system for providing notice, scheduling hearings, providing access to documents, and in recognition of the fact that a vast majority (over 95 percent) of unemployment insurance hearings are conducted over the phone. These technological advances have rendered many of the provisions in the rules obsolete or unworkable in practice. When these rules were originally enacted in 1987, only 10 percent of hearings were conducted over the telephone, the Department's UI budget was higher, and the federal timeliness requirements were less stringent.

The third goal of the proposed amendments is to offer guidance to participants in the hearing process. In over 95 percent of unemployment insurance hearings the participants are without the assistance of a licensed attorney. The Department sought to provide full and clear explanations of the hearing procedures so that all parties involved, including the unemployment law judge, understand the process and expectations. Throughout the existing rules, procedures are only partially explained, which can lead to confusion or surprise. With the proposed amendments, the Department aims to provide participants with more information so as to achieve better and fairer processes.

The fourth and final goal of the proposed amendments, more specifically, the proposed repeal of certain rules, achieves the goal of simplifying the administrative rules, and alleviating burdensome requirements and provisions that are no longer necessary in light of the Department's practices.

## ALTERNATIVE FORMAT

Upon request, this Statement of Need and Reasonableness (SONAR) can be made available in an alternative format. To make a request, contact Christine Hinrichs by mail at Department of Employment & Economic Development, 332 Minnesota Street, Ste. E200, St. Paul MN 55101, by phone at 651-259-7269, or by e-mail at Christine.Hinrichs@state.mn.us. TTY Users may call the Department of Employment & Economic Development at 1-866-814-1252.

## STATUTORY AUTHORITY

The Department's statutory authority to amend administrative rules related to evidentiary hearings is stated in Minnesota Statutes, section 268.105, subdivision 1(b) (2012), which provides that "[t]he department may adopt rules on evidentiary hearings." This statutory

authority was provided for in the original enactment of the state's economic security law in 1936, *see* 1936 Minn. Laws, ch. 2, § 8, at 20-21, which provided that "the conduct of hearings and appeals shall be in accordance with the rules prescribed by the commission for determining the rights of the parties." While the statute has been reworded and renumbered since then, the authority of the Department to provide rules related to the conduct of hearings has not substantively changed since the original enactment.

The Department's statutory authority to amend the rules related to employer records and other definitional rules is stated in Minnesota Statutes, section 116J.035, subdivision 2 (2012), which provides that the commissioner has general power to adopt rules pursuant to Chapter 14 to carry out his or her duties or responsibilities. Under Minnesota Statutes, section 268.186(a) (2012), employers must keep records according to the rules adopted by the commissioner. This statutory authority was provided in 1984. *See* 1984 Minn. Laws ch. 604, §1.

The Legislature has not revised the Department's statutory authority to amend these proposed rules since January 1, 1996. Therefore, Minnesota Statutes, section 14.125, which requires that an agency publish a notice to adopt rules within 18 months of the effective date of the law authorizing the rules, does not apply.

Under these statutes, the Department has the necessary statutory authority to amend and repeal the proposed rules.

## REGULATORY ANALYSIS

Minnesota Statutes, section 14.131, sets out eight factors for a regulatory analysis that must be included in the SONAR. Paragraphs (1) through (8) below quote these factors and then give the Department's responses.

**(1) A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.**

The classes of persons who will be affected by the proposed amendments include applicants for unemployment benefits and employers that pay unemployment insurance taxes. Applicants and employers will benefit from these proposed rules in that both classes will have a greater understanding of the evidentiary-hearing process and therefore obtain a more fair result. Moreover, employers will benefit from the proposed repeal of certain rules, in that employers will no longer need to keep unnecessary records for Department audits. The Department will also benefit from the proposed amendments for those same reasons.

**(2) The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.**

There are no additional costs to the Department due to implementation and enforcement; there is no cost to any other agency due to implementation and enforcement; and there is no anticipated effect on state revenue. The rules mostly codify and clarify existing practices.

**(3) A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the rule.**

The proposed rule amendment is the least costly and least intrusive method for achieving the purpose of the rule.

**(4) A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule.**

The Department did not consider any alternative method for achieving the purpose of the proposed rules. The rules exist to outline the procedures of the evidentiary hearings and the guidelines for employers, as provided for by statutes. Amending the rules for accuracy, clarity, and fairness was the only method for achieving the Department's goals.

**(5) The probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals.**

The rule amendments proposed do not increase costs to affected parties.

**(6) The probable costs or consequences of not adopting the proposed rule, including those costs of consequence borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals.**

The consequence of failing to amend the proposed rules would be rules that are inconsistent with Minnesota Statutes, rules that do not reflect the Department's practices, rules that do not adequately inform participants of hearing procedures, and rules that place unnecessary record-keeping burdens on employers.

**(7) An assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need and reasonableness of each difference.**

There are no differences between the proposed amendments and federal regulations.

**(8) An assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule, where "cumulative effect" means the impact that results from incremental impact of the proposed rule, in addition to other rules, regardless of what state or federal agency has adopted the other rules. Cumulative effects can result from individually minor but collectively significant rules adopted over a period of time.**

These amendments will have no impact on other federal and state regulations related to the purpose of these rules.

## NOTICE

As required by Minnesota Statutes, section 14.101, the Department published its Request for Comment in the State Register on August 5, 2013. On August 6, 2013, the Department mailed the Request for Comment to all persons on the Department's rulemaking list and provided electronic copies to the individuals who requested electronic notice. The Request for Comment was also published on the Department website: http://mn.gov/deed/about/what-guides-us/rulemaking/. The proposed amendments will not impact farming operations, because the Department does not currently utilize rules related to "agricultural employment," in employer audits.

## CONSULTATION WITH MINNESOTA MANAGEMENT & BUDGET

As required by Minnesota Statutes, section 14.131, the Department will consult with the Minnesota Management and Budget (MMB). We will do this by sending the MMB copies of the documents sent to the Governor's Office for review and approval on the same day we send them to the Governor's office. We will do this before the Department's publishing of the Notice of Intent to Adopt. The documents will include: the Governor's Office Proposed Rule and SONAR Form; the proposed rules; and the SONAR. The Department will submit a copy of the cover correspondence and any response received from MMB to OAH at the hearing or with the documents it submits for ALJ review.

## DETERMINATION ABOUT RULES REQUIRING LOCAL IMPLEMENTATION

As required by Minnesota Statutes, section 14.128, subdivision 1, the Department has considered whether the proposed rules will require a local government to adopt or amend any ordinance or regulation in order to comply with these rules. The agency has determined that they do not because the rules simply provide information for individuals participating in evidentiary hearings before the Department and would not impact local government ordinances or regulations. Moreover, to the extent the employer-records provision does impact local governments, an ordinance or regulation change would not be required as the proposed amendment lessens existing requirements and does not add to those requirements.

## COST OF COMPLYING FOR SMALL BUSINESS OR CITY

As required by Minnesota Statutes, section 14.127, the Department has considered whether the cost of complying with the proposed rules in the first year after the rules take effect will exceed $25,000 for any small business or small city. The Department has determined that the cost of complying with these proposed amendments in the first year after the rules take effect will not result in any cost increase for any small business or small city. The amended rules

largely codify existing practices of the Department and thus will not cause any financial impact to any business or city participants. The record-keeping amendments will reduce costs for small businesses and cities by eliminating the need to keep certain records for Department audits.

**RULE-BY-RULE ANALYSIS**

The Department proposed several stylistic changes throughout the rules. In the interest of space and readability, those changes are discussed below as opposed to justifying each change throughout the rule discussion:

1. References to "the department" or "the appeals office" are changed to refer to "the chief unemployment law judge." "The department" is an unclear reference as the Department of Employment & Economic Development encompasses a multitude of programs in addition to the UI program. Moreover, there is no "appeals office" in the Department or the UI program. Any number of individuals from across the Department could receive communications from parties directed to "the Department" or the "appeals office." Having the rules refer only to "the chief unemployment law judge" promotes consistency and ensures that communications from parties are directed to the right division of the Department. A party need only use the title, not the name of the chief unemployment law judge, in order to ensure that the communication is directed to the proper office. This is similar to communications directed to the "Attorney General," where a specific name is unnecessary. The substantive aspects of the rules do not change.

2. References to "judge" are amended to refer to "unemployment law judge." This change was deemed reasonable because the substantive aspect of the rules does not change. The change was deemed necessary to distinguish between the chief unemployment law judge and the unemployment law judge involved in a given case.

3. References to requests or communications between parties and the Department are amended to include "mail" and "electronic transmission." Throughout the rules, different verbiage was used to describe the methods parties can use to contact the Department, and for consistency and ease of understanding, the Department is amending all of those references to include "mail" and "electronic transmission." Such word usage is consistent with the references in relevant statutes, for example, Minnesota Statutes, section 268.103, subdivision 2 (2012), which requires that the Department allow appeals by mail "even if an appeal by electronic transmission is allowed," and Minnesota Statues, section 268.105, subdivision 1(a) (2012), which requires the Department to send notices to all involved parties "by mail or electronic transmission." "Electronic transmission" is defined at Minnesota Statutes, section 268.035, subdivision 12d (2012) to include online, telephone, and faxed transmissions.

**3310.2901 Scope and Purpose.**

The Department proposes to amend the "scope and purpose" part of the rules generally for clarity and completeness. The primary change to this part is the addition of two subparts. Under Minnesota Statutes, section 268.101, subdivision 3a (2012), a hearing in front of a ULJ may take place when a party appeals a department-issued determination or when a matter is referred directly without an initial department-issued determination. The language of the "scope and purpose" section referred only to hearings following a determination, and it was therefore unclear in the rules whether those same procedures applied to matters referred for a direct hearing despite the fact that all hearings are, for UI policy purposes, subject to these same procedures.

The addition of subpart B addresses this deficiency in the rules, and is necessary to provide complete and accurate information to all parties involved in an evidentiary hearing.

In the new subpart A, the Department proposes to remove language that lists some of the possible, appealable determinations. Such language was deemed confusing and unnecessary in the "scope and purpose" part, and determination is defined by Minnesota Statutes, section 268.035, subdivision 12c (2012). Each determination that is mailed out to the parties is appealable. And it is reasonable to refer generally to determinations, instead of specifically listing determinations, as the types of determinations may change as the law changes.

Finally, a stylistic change is proposed, removing the phrase "on the appeal," and replacing it with "following," in the introductory paragraph to make the entire rule grammatically correct and easy to read with the addition of two subparts.

**3310.2902 Definitions.**

**Subpart 2.** Subpart 2 is proposed for deletion. A definition of "appeals office" is not necessary as its reference is removed from the rules. "Appeals office" is not a recognized unit in the UI division or the Department.

**Subpart 4a.** Subpart 4a is being added to include a definition for "hearing." This amendment codifies the statutory references to "hearing," found in Minnesota Statutes, section 268.105, subdivision 1 (2012), into the rules.

**Subpart 5.** Subpart 5 is being amended to remove the modifier "unemployment benefits" to the word "applicant" because it is unnecessary. "Applicant" is a defined term at Minnesota Statutes, section 268.035, subdivision 2a (2012). These proposals are reasonable because they do not substantially alter the rule and because the amendments would bring the rules in line with existing statutory provisions.

**3310.2905 Notice of ~~Appeal~~ Hearing.**

The Department proposed the new title of this part to refer to "hearing" rather than "appeal." First, the change would bring the rule into line with the corresponding statute, Minnesota Statutes, section 268.105 (2012), which explains the evidentiary hearing process. But more importantly, the "notice of appeal" document no longer exists. Originally, the Department mailed all parties a "notice of appeal" document, to notify all involved that a party had appealed the original determination. Later, after the hearing date had been scheduled, a "notice of hearing" would then be mailed. But the "notice of appeal" is no longer mailed out to parties because almost all (95 percent) scheduling is done electronically upon filing an appeal. Because the appealing party chooses the hearing date at the same time as they appeal the determination, the two documents are not necessary. Now, the only document mailed out to the parties is the notice of hearing, which notifies the parties of the appeal as well as the date of the hearing in a single document. The amendment is necessary to reflect this practice and to accurately inform the parties of the process. This change is also found in the last sentence of the first paragraph of this rule for the same reasons.

**Subpart 2. ~~Information~~ Notice.** The heading is amended to add "Notice" and remove "Information" simply for consistency within the rules. The amendment to the body of subpart 2 moves the language from existing rule 3310.2910. The Department proposed this amendment to bring all requirements related to pre-hearing notice into a single rule. Before the proposed amendment, a party to a hearing would need to read through several rules to understand the notification requirements. This proposed amendment achieves the Department's goal of making the rules more accessible and user friendly for participants.

The first paragraph of subpart 2 also includes several new provisions. The first is the requirement that the chief unemployment law judge send the notice of hearing. The prior version of this rule did not specify the person or entity responsible for sending the notice and this change is simply for consistency within the rules. The paragraph also requires that the notice contain the "method by which the hearing will be conducted." While an overwhelming majority of hearings are done via telephone conference, some are still conducted in person for a variety of reasons. The Department felt it was necessary to inform all parties at this stage in the proceedings if the hearing would be conducted in person or over the telephone. Currently, the notice of hearing already contains this information, so the amendment would codify the Department's existing practice. Finally, this paragraph is amended to include the phrase "materials that provide," simply for clarity of language and to reflect the fact that the actual notice document does not contain this additional information, but that the Department's pamphlet discussing the evidentiary hearing does have this information. This again codifies the Department's existing practice of providing all of this information in a separate, easy-to-read, pamphlet for all parties.

Item A is amended to eliminate the requirement that the Department's hearing notice include a statement that "a hearing will be scheduled promptly and that the parties should begin to prepare for the hearing," and adds to the notice requirement a statement that "the purpose of the hearing is to take sworn testimony and other evidence on the issues involved, that the hearing is the only procedure available under the law at which a party may present evidence, and that further appeals consist only of a review of the evidence submitted at the hearing." The amendment is necessary and reasonable because it accurately informs parties of the nature of the hearing and the subsequent review process. As described above, it is no longer necessary to tell the parties that a hearing will be scheduled promptly because when they receive this notice, the hearing has already been scheduled.

The Department found it necessary to provide additional information in the notice mailed to all parties regarding the purpose of the hearing. This amendment is reasonable because it is consistent with the goals of this rulemaking process, which is to provide clear and accurate guidance to hearing participants. It is particularly reasonable to inform parties that the evidentiary hearing is the only procedure available at which they are able to present evidence. All subsequent procedures, such as the request for reconsideration stage (*see* Minnesota Statutes, section 268.105, subdivision 2 (2012)) or review at the appellate courts (*see* Minnesota Rules of Civil Appellate Procedure 110.01), do not allow for the consideration of new evidence. The Department concluded that it was necessary to provide that information before the hearing.

Item C is amended to include a requirement that the Department's hearing notice include a brief statement of the role of the unemployment law judge in the hearing. This amendment is necessary to codify the department's existing notice procedures and to provide full and clear information to parties before the hearing about the process.

Item D is amended to remove from the notice requirement a statement that parties should "bring to the hearing all documents and records." This amendment is necessary in order to be consistent with the language existing in rule 3310.2912, which provides that parties submit documents at least five days in advance of the hearing. Without the amendment, parties would receive conflicting information about the appropriate time to supply documents and exhibits. Moreover, the amendment is reasonable due to the nature of the telephonic evidentiary hearings and the need for parties to submit documents and records in advance.

The amendment also clarifies that the notice should inform parties to "arrange in advance for the participation of witnesses." It is reasonable and necessary to include this in the Department's notices given the nature of the hearing and the volume of hearings. In order to ensure a timely decision on the appeal, having parties adequately prepare for the hearing with any anticipated witnesses is critical. Providing this information in the first notice is consistent with the Department's goal of ensuring better and fairer results for all hearing participants.

Item E is amended in part for clarity of language and also to remove the requirement that the Department provide notice to the parties that they may request the documents submitted by the other party before the hearing. This amendment is reasonable because the Department already provides all exhibits to the parties in advance of a hearing without the need for a request, and the amendment proposed in Item G reflects that existing practice. The amendment would also permit parties to learn the name of any attorney or representative in addition to witnesses. It is reasonable to allow this prior to the hearing to prevent any surprises. The amendment also replaces "another" with "the other" to describe the party for clarity and precision. And finally the amendment replaces "bring to" with "have testify" to more accurately explain the hearing process.

Item F is amended to replace "attendance" with "participation" when referring to witnesses at the evidentiary hearing. This amendment is reasonable because it uses language consistent with a telephonic hearing and does not make substantive changes.

Item G is amended to include in the Department's notice a statement that records submitted by the parties will be sent to the parties in advance of the hearing. This amendment is reasonable because it codifies the Department's existing practice of compiling and mailing the parties all documents received before the hearing. The amendment also adds the word "possible" to modify "exhibits," which is necessary to reflect the fact that records submitted for the hearing must be deemed admissible by the unemployment law judge.

Item H is amended for clarity of language. The amendment removes a direct quotation and provides the notice information in more general terms. This change is reasonable because it does not substantially change the meaning or requirements outlined in the rule, and it is necessary to provide the Department with flexibility to change or alter the notification provisions if the law changes or the language is subsequently deemed unworkable or confusing. The Department's current pamphlet is written in first-person language and that current practice will continue.

Item I is a proposed addition to the subpart. This amendment is necessary for consistency with Minnesota Statutes, section 268.105, subdivision 1(a) (2012), which requires that the Department notify parties about the preponderance-of-the-evidence standard. This amendment is reasonable and necessary to comply with existing law.

Item J is a proposed addition to the subpart. This amendment is necessary for consistency with Minnesota Statutes, section 268.105, subdivision 1(d) (2012), which provides a good-cause standard for granting a rehearing to parties who fail to participate in the original evidentiary hearing. This amendment is reasonable and necessary to comply with existing law.

Item K is a proposed addition to the subpart. This amendment requires the Department to include in its notice a statement that an unemployed applicant must continue to file requests for unemployment benefits while an appeal is pending. Under Minnesota Statutes, section 268.085,

subdivision 1 (2012), an applicant is only eligible for benefits if he or she "has filed a continued request for unemployment benefits for that week." Many times, applicants stop requesting benefits while their eligibility is under consideration. If that applicant is later deemed eligible, he will be ineligible for the weeks that he failed to request benefits. If he did continue requesting, he would be entitled to payment for all of the weeks that he requested during that period of time, so long as all other eligibility requirements are met. The Department proposes this amendment to ensure that applicants do not lose out on unemployment benefits to which they are entitled during the process of determining eligibility. Moreover, this proposed amendment is reasonable because the Department's notice already contains this language.

**3310.2908 Rescheduling; and Continuances.**

The heading is amended to reflect the Department's amendment that would differentiate between rescheduling and continuances. Under the proposed rule, a request to reschedule would occur before the evidentiary hearing started, while a continued hearing would result once the hearing had started and testimony was taken. Recognizing the difference between these two requests in the administrative rules is reasonable in light of the procedural posture of the case at the time of the request.

**Subpart 1.** "Subpart 1" as proposed discusses the process for rescheduling a hearing. The substantive aspect of this provision remains largely the same. The amendment replaces "in writing" with "by mail," for accuracy and to more clearly distinguish between online, telephone, faxed, and mailed requests.

The Department proposes several amendments to this rule in the interest of clarifying the language and ensuring that parties can easily understand the hearing process. The proposed changes do not result in a substantive change to the Department's practices. The first proposed amendment would remove the reference to requests to reschedule hearings made for purposes of delay or inability to be present at the hearing due to illness or other judicial proceeding. This language is unnecessary in light of the existing provisions of the rule that require the ULJ to consider the reasons for a party's need for additional time. The broad language resulting from the proposed, final version of the rule would certainly permit the ULJ to consider these circumstances when ruling on a request for a rescheduled hearing. Additionally, the Department's proposed amendment would remove certain examples that the rule currently references where the ULJ must reschedule a hearing. The general provision articulated in this rule includes a "catchall" that requires a rescheduled hearing for any "compelling reason beyond the control of the party," and that would certainly include illness or attendance at another court proceeding. Moreover, the failure of a subpoenaed witness to appear would also be encompassed by this more general provision. These two proposed amendments are reasonable in light of the Department's goal for its administrative rules, which is ease of understanding for

parties involved in the hearing process. By articulating general standards, instead of listing specific examples, the parties will not become confused about the rescheduling process, in terms of requesting a rescheduled hearing or the process of the ULJ in considering such a request. Additionally, the proposed amendments ensure that the rules are flexible and easily adaptable to situations that may arise with parties or the ULJ prior to a hearing.

In addition, the Department proposes several other amendments in this subpart that are aimed simply at clarifying the language and reflecting the Department's existing practices in order to provide as much information to parties before the hearing as possible. The proposed amendment replaces "attendance" with "participation" to reflect the fact that a majority of hearings are conducted by telephone. And the amendment adds language that provides each party the opportunity to request to reschedule a hearing. This amendment is reasonable to ensure fairness, and is consistent with the Department's current practice of permitting each party to request a rescheduled hearing. Importantly, this amended language does not prevent the ULJ from granting additional rescheduling requests so long as the "compelling reason" standard also articulated in the rule (and discussed previously) is met.

Finally, the subpart is amended to exclude rescheduled hearings from the ten-day notice requirement. This amendment is reasonable in light of the Department's goal of achieving timely and fair results for all parties and the federal standards for evidentiary hearings. The ten-day notice requirement exists to provide parties with ample notice of the hearing and time to prepare. But in the case of a request to reschedule, the parties have had that ten-day period and an additional ten days is not necessary. Not all requests to reschedule a hearing would require ten days of notice to both parties. Many times, both parties are involved in the request to reschedule a hearing, and a mutually agreeable date may occur before the ten-day period. Some requests are made due to work conflicts, unexpected illnesses, or attorney conflicts, and can be rescheduled within a few days of the original hearing date. The purpose of the amendment is to allow the ULJ and the parties flexibility in choosing a new hearing date. And again, this amendment is reasonable and necessary to ensure that the matters are resolved quickly to avoid large overpayments or prolonged underpayments.

**Subpart 2.** "Subpart 2" is a proposed addition to this rule and further reflects the difference between rescheduling a hearing and continuing the hearing for additional evidence. Subpart 2 deals with requests for a continuance. The amendment is reasonable because it reflects the current practice of ULJs considering requests for a continuance, where a ULJ may proceed with a hearing and consider at the end of the hearing whether a continuance is necessary in order to obtain additional evidence or testimony. Many times the additional documents or witnesses are not necessary to resolve the issues, and this rule clarifies that the ULJ may conduct the hearing in order to determine whether that evidence is necessary. This practice, which is not outlined nor prohibited in the rules as they exist, can be confusing for hearing participants, and so the Department deemed it necessary to outline the process in the rules in order to offer information and guidance to participants on this process. Providing uniform procedures for ULJs

is also desirable in order to ensure fairness, and thus the proposal is also reasonable for that reason. The amendment also exempts continued hearings from the ten-day notice requirement for the same reasons outlined in the preceding discussion.

**3310.2910 Consolidation of Issues and New Issues.**

The heading is amended to remove the reference to "notice of hearing," which is the amended heading of Rule 3310.2905. The rule is amended to remove the discussion of notice-of-hearing requirements as those requirements are discussed in amended rule 3310.2905. Such an amendment is reasonable to avoid duplicate rules.

The remaining language of this rule is amended to remove the reference to a party's "motion" and replace that reference with the word "request," to make the language of the rule easier to understand to a non-attorney, which encompasses most of the hearing participants. The phrase "to a hearing" to modify "party" is removed as redundant and unnecessary, in light of the rule defining "party".

The rule is further amended to clarify that the unemployment law judge must advise parties of the right to object to the consolidation of additional issues and outlines the procedure the ULJ must follow if a party does object. The rule in its current version does not require the ULJ to inform the parties of their right to object to the consideration of a new issue. In order to obtain a fair and knowing waiver of the ten-day notice requirement outlined in Minnesota Statutes, section 268.105, subdivision 1(b) (2012), the Department deemed it necessary to affirmatively advise parties of this right, both in the rules and during the hearing. Furthermore, specifically advising parties of the right to object before proceeding with new issues was deemed necessary in order to achieve fair hearings and ensure that all participants are fully prepared to discuss the issues.

Along with the right to object, the rule provides guidance to the ULJ on how to proceed following an objection. The procedure in the event of an objection is consistent with rule 3310.2908, which allows for a continuance to obtain documents or witness testimony if a party is not prepared. The amendment is also consistent with the determination procedures outlined in Minnesota Statutes, section 268.101, subdivision 2 (2012), which discusses the first-level determination process for newly raised issues. This amendment is reasonable because it simply codifies the procedures that currently exist in the rules and in the statute.

**3310.2911 Interpreters.**

The proposed amendment includes several changes for clarity of language and to ensure that anyone with difficultly understanding the proceedings is afforded an opportunity to obtain

an interpreter. To that end, the Department seeks to amend the time requirement for requesting an interpreter, and allow an extra two days for parties prior to the date of a hearing to request an interpreter. Additionally, to simplify the language, the amended rule removes the phrase "if no request is made," because the phrasing is unnecessary in light of the existing affirmative obligation of the ULJ to continue a hearing for an interpreter when needed. The amendment also removes "principal party in interest" and "is a disabled person" in favor of the more simple phrasing of "party needs an interpreter." The proposed language is much easier to understand and the amendment is reasonable to achieve the goal of giving parties clear and accurate information. The phrase "principal party in interest" is confusing, not defined, and employs too much legalese to be easily understood by a majority of the hearing participants. For that reason, the proposed phrasing of the rule is reasonable. The language is also amended to clarify that a person may need an interpreter to be understood or to understand and that in both circumstances an interpreter is necessary. The amendment is reasonable to ensure due process for all participants to a hearing.

Another change for providing clarity removes the phrase "documents distributed" and replaces the phrase with "written materials sent" simply for ease of understanding and to be consistent with the other rules. The proposed amendment includes the requirement that the Department send statements in other languages to all notices and written materials, regardless of whether there is a reason to believe the recipient does not speak English, again to achieve the goal of fairness and to ensure that no participant is inadvertently overlooked as needing notices in another language.

Finally, the amendment also requires that the written statement include the Somali language as an increasing number of participants in the hearings are Somali speakers. In 2012, the Department received 224 requests for Somali interpreters, representing over 36 percent of the interpreter requests. (*See* Appendix I.) It is reasonable and necessary to include the Somali language in this notice to ensure due process.

The Department is also proposing a deletion to the rule, which would remove the requirement that the notices also be in Cambodian and Laotian. Importantly, this deletion does not mean the Department is prohibited from providing the notices in this language; instead the goal of the amendment is to streamline the rules and require only what is necessary. In 2012, the Department received five requests for Cambodian interpreters and 20 requests for Laotian interpreters, representing a total of 4 percent of the requests. (*See* Appendix I.) It is reasonable to remove these languages from the "required" status that currently exists in the rule, and require only those languages that are seen with more frequency in Department hearings. To require all languages that are requested each year would be overly burdensome, confusing, and cost prohibitive. (*See* Appendix I.)

It is important to note that this rule does not limit the languages in the written notice; it states only the minimum requirements. The Department currently provides more assistance than

is otherwise required by rule or statute, and fully intends to include more than these minimum requirements in the notice. Indeed, there is no statutory requirement that the Department even send a language notice with any initial determination of eligibility, but the Department does provide this notice in seven languages.

**3310.2912 Exhibits in ~~Telephone Conference~~ Hearings.**

This amendment makes several changes to the rule for clarity of language that do not substantially affect the substance or meaning of the rule:

- The rule is amended to remove the modifying phrase, "telephone conference," to reflect that while most of the Department's hearings are over the telephone, some are in person. Using the phrase "hearing" as a general term is reasonable for the rule to encompass all types of hearings and to be more accurate. This change is in the heading as well as in the rule text.

- The rule replaces "time" with "date" when discussing the five-day time frame for submitting exhibits. This change is reasonable because it provides more clarity and flexibility for parties who wish to submit documents and exhibits to the Department.

- The phrase "they wish" is amended to read "a party would like," for grammatical purposes. Moreover, as indicated earlier, submitting documents to the "chief unemployment law judge" insures the documents will be deliver promptly to the appropriate staff.

- The phrase "submitted by the parties" is added to describe the documents submitted to differentiate between documents provided by parties and those provided by the Department. The rule is also amended to include a reference to "the parties' representative" when discussing the recipient of the exhibits. Such an amendment is reasonable because if a representative is involved in the hearing and the party designates that fact in advance, the representative should also receive these documents in advance in order to adequately prepare for the hearing.

- A "moving party" is changed to a "requesting party" and to continue reflecting the fact that the hearings do not need to conform to evidentiary rules, and motions are not necessary. Making the language generally applicable is reasonable in light of this aspect of the Department's hearings.

- The phrase "opposing party" is changed to "other party" to reflect the fact that the hearing is an evidence-gathering inquiry; the use of informal verbiage is reasonable given the nature of the hearing.

- The phrase "objection" is removed in recognition that the evidentiary hearing does not need to conform to traditional evidentiary rules and that a response to exhibits may be sufficient to reflect disagreement with an exhibit.

**3310.2913 Access to Data.**

The proposed amendments to this rule remove specific references to rules and statutes, in order to make the language more general and easy to read. The amendment removes references to "proceedings under parts 3310.2910 to 3310.2924," for clarity, and when necessary, replaces the references with the phrase, "the hearing." Additionally, the proposal removes references to the specific data privacy laws, "Minnesota statutes, chapter 13, Minnesota Statutes, section 268.19," and refers to "all" data practices laws. This amendment is reasonable because it is consistent with the Department's goal of maintaining consistency between the rules and relevant governing statutes. The specific references in the rule exclude any changes, new statutes, or new governing authority that may be enacted and be binding on the Department. A more general reference to "all law related to data practices," is reasonable to ensure that any changes can be incorporated into these requirements. Moreover, the rule related to data access is directed mostly at the Department, and not necessarily to the parties involved. Thus, removing specific references would not be inconsistent with the Department's goal of providing clear and accurate information to all parties.

Finally, the amendment removes language requiring the Department to provide copies of exhibits upon request, which is reasonable in order to be consistent with the requirement in rule 3310.2912 that all exhibits be provided to the parties without the need to request those exhibits.

**3310.2914 Subpoenas and Discovery.**

**Subpart 1.** This proposed amendment clarifies language in the rule and adds a specific reference to the unemployment law judge's ability to issue a subpoena on the judge's own motion. This amendment is reasonable to reinforce the fact that the judge has the duty to fully develop the record. The proposal removes the provision indicating that a party may renew a request for a subpoena because it is redundant in light of the existing language in the rule requiring the unemployment law judge to reconsider the request. The amendment also makes several language adjustments for clarity:

- The subpart is amended to state that an unemployment law judge may issue a subpoena, instead of describing the subpoenas as "available" to a party. This continues to reflect the fact that the judge has discretion in whether to issue a subpoena based on the party's need. The amendment also removes references to "applying" for a subpoena and changes those references to "requesting," to reflect the actual process of obtaining a subpoena. This change is consistent with the Department's goal of providing accurate and accessible information to all parties involved in the evidentiary hearing.

- Additional language in this proposal removes redundant language and provides specifically that a subpoena request made before the hearing must be reconsidered by the

unemployment law judge, after testimony and other evidence available has been considered, and that if the request was improperly denied, the unemployment law judge must continue the hearing to allow issuance of the subpoena. This amendment is reasonable and necessary to ensure that a party's request is considered by the unemployment law judge hearing the case in light of the evidence presented.

**Subpart 2.** This amendment changes "working days" to "calendar days," to the length-of-time provision for disclosing witnesses at an upcoming hearing. This change is necessary and reasonable in order to provide consistent information to all parties. The phrase "working days" is not defined, and is subject to varied interpretations given the types of industries involved in evidentiary hearings. Some participants may work weekends, and therefore have a different idea of "working days," than other participants who work a different schedule. The use of the phrase "calendar days" ensures that all parties understand the timing requirements.

The proposal also changes references to a discovery "request" instead of a "demand." This change is stylistic and consistent with the other amendments designed to avoid adversarial language. The amendment also changes the vernacular used to describe how parties participate in the hearing, using the phrase, "have testify," and omitting the word, "call." The rule is also amended to remove the unnecessary references to both the need to identify written documents in advance and providing an opportunity to inspect documents in advance of the hearing because, under rule 3310.2912, parties are required to submit written documents they would like considered before the hearing. The references removed in this subpart are unnecessary.

Finally, the amendment changes the consequences of a failure to comply with discovery requirements from a "reschedule" to a "continuance" to reflect the new difference between the two actions as defined in rule 3310.2908. The amendment also simplifies the language of the consequence from "must consider" to "may." The current language is confusing and this amendment is consistent with the goal of modifying the rules to be more easily understandable to the participants. The amendment is reasonable because not all failures to comply with a witness disclosure in advance of a hearing will be prejudicial or unfair to hearing participants. The ULJ must retain the discretion to determine when a continuance is needed for fairness.

**3310.2915 Disqualification of Unemployment Law Judge.**

The proposed amendment on disqualification makes several changes that aim to simplify and clarify the process of disqualification, both for the Department and for hearing participants. The existing rule states only that a ULJ "must remove" himself or herself in certain situations. The amendment requires the ULJ to request removal from the chief unemployment law judge, and gives the chief unemployment law judge the ultimate decision as to whether disqualification takes place. This amendment is reasonable because it codifies the existing practice in the Department, where a ULJ takes concerns about certain cases to the chief unemployment law

judge for possible removal and reassignment, and it is consistent with the existing rule provisions that require the chief unemployment law judge to determine the fitness of a ULJ to hear a case if a party requests disqualification. The amendment is also reasonable because it provides consistency of application and prevents abuse of the disqualification provision by ULJs.

But the situations whereby a disqualification must occur remain the same under the proposed amendment. The amendment removes the phrase "blood or marriage" and leaves the broader phrase "related to the judge," and also broadens the scope of disqualification to include situations where a party has a "personal relationship" with a judge. This amendment is reasonable in order to ensure that parties receive a fair hearing. Finally, the amendment would remove the line requiring a ULJ to remove himself or herself if he or she had a financial or personal interest in the case, because it is duplicative of the immediately preceding sentence, which requires the chief unemployment law judge to disqualify a ULJ in those exact circumstances.

Finally, the amendment alters certain language for clarity, indicating that a party can request the removal of a judge and removing language regarding a motion for removal. This amendment is reasonable given the nature of the evidentiary hearing in that formal motion practice is not required.

**3310.2916 Representation Before Unemployment Law Judge.**

The proposed amendment simplifies the rule by removing language differentiating between individuals and business entities. The amendment is reasonable because it provides the same representation requirements for all parties, which is not a substantive change to the existing rule. The proposal also adds a prohibition on charging a fee for representation of an applicant in a hearing unless the representative is an attorney-at-law, consistent with Minnesota Statute, section 268.105, subdivision 6, paragraph (b) (2012).

This rule is also amended to simplify the language related to the removal of a representative from a hearing. The amendment would clarify the language and make it easier to read. For example, instead of referring to a "proceeding before an unemployment law judge," the amendment would have the rule read simply, "a hearing." Moreover, the amendment does not substantively alter the situations in which an unemployment law judge may refuse to allow an individual to act as a representative: if the representative is acting unethically or failing to follow the judge's instructions. Because the amendment simplifies the language of this provision, it is consistent with the Department's goal for rulemaking and is reasonable.

**3310.2917 Public Access to Hearings and Recordings of Hearings.**

The heading is amended to include a reference to recordings of hearings as the body of the rule discusses procedures related to recordings. The proposed amendment divides the rule into two subparts to distinguish between the rule related to public access to hearings and rules related to recordings.

**Subpart 1.** Subpart 1 discusses public access to hearings. The rule is amended to require unemployment law judges to accommodate requests by the public to listen to telephonic or in-person hearings. This amendment is reasonable and necessary because, as indicated by the existing rule, these hearings are public, and the existing rule did not provide any guidance on accommodating requests from the public. The amendment modifies the language "nonessential persons" to "member of the public" simply for readability, and removes the provision allowing the ULJ to exclude a member of the public for space limitations. This amendment is reasonable because a majority of hearings are conducted by telephone, and for in-person hearings, maintaining decorum would encompass issues with space limitations. The amendment is also reasonable because it ensures that the public has access to the hearings. Finally, the amendment also removes a provision allowing the unemployment law judge to sequester witnesses because it does not relate to the public nature of the hearings; the language is reproduced in a substantially similar form in rule 3310.2921.

**Subpart 2.** The proposed amendment adds subpart 2 to discuss recording of hearings. The rule also removes unnecessary language discussing a hearing room to reflect that hearings occur in person and on the telephone. Using more general language that applies to both types of hearings is reasonable. The amendment also removes the word "attorney" in favor of the general phrase "representative" to apply broadly to any type of representative in the hearing. Finally, the amendment simplifies the language of this rule to state "during the hearing," as opposed to "while the hearing is in session." This amendment is reasonable because it does not change the substantive aspect of the rule, and it is consistent with the Department's goal of providing clear instructions to all parties involved.

**3310.2920 Administration of Oath or Affirmation.**

The proposed amendment clarifies that the unemployment law judge has the authority to administer an oath or affirmation, consistent with Minnesota Statutes, section 268.105, subdivision 4 (2012). This amendment is reasonable and necessary given the requirement that all testimony be given under oath or affirmation, and clarifies the authority of the judge. The amendment also removes, as unnecessary, a sentence indicating that the mode of administering the oath is as practiced in the state. The amendment simplifies the rule by removing unnecessary verbiage, "as set forth."

**3310.2921 Conduct of Hearing.**

The rule is amended to state that the chief unemployment law judge has the discretion to determine whether a hearing will be held in person or on the telephone, as provided for in Minnesota Statutes, section 268.105, subdivision 1, paragraph (b) (2012). This amendment is reasonable and necessary to provide clear information to all parties involved in the process, and to ensure consistency with the statute. The statute gives this authority to the chief unemployment law judge in order to ensure uniformity among requests, fairness to hearing participants, and the best use of Department resources. The amendment is reasonable and necessary to be consistent with the statute.

The amended rule also removes a reference to the statutory burden of proof and adds a provision indicating that the hearing is a de novo, evidence-gathering inquiry conducted without regard to a burden of proof. This amendment is necessary for consistency with Minnesota Statutes, section 268.069, subdivision 2 (2012), which recognizes that an applicant's entitlement to unemployment benefits must be determined "without regard to a burden of proof," and Minnesota Statutes, section 268.105, subdivision 1, paragraph (b) (2012), which states that the hearing is de novo and is conducted as an evidence-gathering inquiry. The amendment is reasonable and necessary to remove inaccurate references to burdens of proof.

The proposed amendment also removes a provision stating that parties must, upon request, be provided with documents because that provision is unnecessary, as all such documents are set to the parties before the hearing as outlined in rule 3310.2912. The amendment would remove "opposing" to modify parties, to reflect that all parties have the right to examine witnesses, object, and cross-examine the other party's witnesses. This amendment is reasonable because it accurately reflects the rights of the parties. The rule is also amended to state that the ULJ "must" assist "all" parties in the presentation of evidence, to clarify that this is an affirmative duty of the judge and that the duty extends to all parties regardless of representation. This amendment is reasonable and necessary because most representatives in hearings are not attorneys and it recognizes the unemployment law judge's responsibility as outlined in Minnesota Statutes, section 268.105, subdivision 1(b), that requires the unemployment law judge to "ensure that all relevant facts are clearly and fully developed." The proposed amendment also includes language from rule 3310.2917 that gives the unemployment law judge the ability to sequester witnesses during a hearing.

The rule would also explicitly provide that the ULJ has the authority to obtain testimony and other evidence from Department employees and "any other person" that would assist in achieving the proper result. Again, such an amendment is reasonable and necessary in light of the ULJ's statutory obligation to ensure that all relevant facts are clearly and fully developed. Many times, department employees have information related to program procedures and system mechanics, and such information is necessary to resolve critical issues in the case. Moreover, the ULJ should not be, and currently is not, limited to the witnesses identified by the parties, and the

amendment clarifies that the ULJ is able to fully develop the record by calling witnesses. This amendment is also reasonable and necessary to ensure consistency with the requirement in Minnesota Statutes, section 268.069, subdivision 2, which states that the Department has a duty to ensure a proper result, regardless of the position taken by any part.

The proposal also includes a list of information that an unemployment law judge must address before taking testimony in an evidentiary hearing, indicated as items A through E. These items correspond with the notice information outlined in rule 3310.2905, subpart 2, items A, B, C, F, and I. The proposal would also require that the ULJ inform parties of the statutory provision on burden of proof and that government agencies may have access to certain information, which currently is required under rule 33310.2919 (proposed for repeal). The amendment also requires the unemployment law judge to inform parties that the hearing may be continued to secure additional witnesses and documents if necessary. This amendment corresponds with Minnesota Statutes, section 268.105, subdivision 1(b), which allows a party to request documents and witnesses by subpoena, and it allows a request to reschedule or continue the hearing in order to secure additional documents or witnesses. Finally, item E of the amendment is added to explain to parties that the unemployment law judge will issue a written decision following the hearing. This amendment is necessary for consistency with Minnesota Statutes, section 268.105, subdivision 2(c) (2012), that outlines the same requirement. It is reasonable to provide this information to the parties before the hearing proceeds so that there are no surprises, so all parties fairly understand the procedures, and so any questions can be answered before the hearing takes place. It is necessary and reasonable to notify the parties of this information again at the beginning of the hearing to ensure that all parties understand the process, consistent with the rulemaking goal of the Department.

**3310.2922 Receipt of Evidence.**

The proposed amendment to this rule makes changes to the language for clarity and consistency. The rule is amended to use active language instead of passive language, and to omit the word "priority" because it is redundant.

**3310.2923 Official Notice.**

The rule is amended to remove the phrase "adjudicative facts" from the list of information of which an unemployment law judge can take notice. This amendment is reasonable because "adjudicative facts" is not defined. The amendment also changes the word "noticed" to "so stated," for clarity of language. The amendment changes the sentence, "[p]arties must be notified of any facts officially noticed by the judge and must be given an opportunity to contest the facts," to remove the portion regarding notice. This change is

reasonable because the rule already provides that the unemployment law judge indicate on the record any noticed facts instead of in the decision, as the rule currently reads. It is reasonable to require this notice on the record to give parties an opportunity to respond and provide additional comments during the hearing.

**3310.2924 Ex Parte Communications.**

This amendment removes references to "appeals" for consistency within the rules. When necessary, the referenced are amended to refer to a "case." The amendment also simplifies the language in the rule, by removing a reference to "parties to the appeal," and changing that reference to "party." These changes are reasonable because they does not substantially change the meaning of the rule.

**3315.0555 Determining Worker Status.**

The proposed amendment to this rule simply clarifies the language and makes it easier to follow. The current wording of the worker-status elements is confusing and awkward. The amendment would provide the full list of five factors, and then indicate simply that factor A and B are the most important of the five. Such rewording simplifies the rule and does not change the rule substantively.

**3315.1001 Scope.**

The proposed amendment to this rule eliminates the word "reports" as unnecessary and duplicative of the word "records." Moreover, the amendment would remove the general reference to "chapter 268" and include the specific citation to "section 268.186." This amendment is reasonable to provide the specific statutory reference for employers seeking to understand the record-keeping requirements necessary for audits to insure compliance with the employer's unemployment insurance tax obligations.

**3315.1010 Records.**

Overall, this rule is amended to eliminate record-keeping requirements for employers. The records kept pursuant to this rule are solely for Department audits. The Department is required to audit whether employers are paying the correct UI tax, to the correct state, and whether employers are classifying employees/independent contractors correctly. Many records provided for under the existing rules are unnecessary for these audits. While keeping such records may be good business practice, the Department is without authority to mandate record-keeping for items unrelated to audits.

**Subpart 1.** The proposed amendment removes unnecessary language to the record-keeping requirements for employers. The rule generally requires employers to maintain records

related to individuals performing services, and the proposal would remove language related to actual or constructive knowledge of work performed for certain individuals. That specific language is unnecessary in light of the general provision requiring records for all individuals performing services. The word "personal" to describe the type of services performed is removed throughout the rule as unnecessary, and the substantive aspect of the rule does not change as a result of that modification.

The amendment further reduces the number of years employers are required to maintain the records from eight years to four years plus the current year. The rule is reasonable because after consultation with the Department auditors, it was determined that such records are not utilized by auditors and have not been utilized since the rules were originally adopted in 1987. Requiring employers to keep records that are not used by the Department is simply unnecessary and burdensome to employers, and the proposed changes are consistent with our federal requirements for employer audits. Moreover, under Minnesota Statutes, section 268.043, subdivision (b) (2012), the Department has the authority to make determinations on employer coverage for only four years. The amendment to this rule is therefore consistent with the statute.

Item C is amended to require employers to keep records of the number of hours each day that an individual performed services. This requirement is already contained in Item K, which is proposed for deletion. The amendment in Item C simply moves the existing requirement to a different part in the rule.

Item E is amended to remove the requirement that employers keep separate records for different types of wages paid or unpaid. This amendment is reasonable because the Department does not need separate records for the different types of wages, thus the requirement is unnecessary and burdensome for employers.

Item F is amended to remove the phrase "base unit" for pay records.

Item G is amended to remove the phrase "pertaining to the furtherance of the employer's business" with respect to record-keeping for allowances or travel reimbursements. This language is confusing and it is reasonable to require records for all allowances or travel reimbursements, regardless of whether those payments further the business. Item G is also amended to refer to "records" instead of "accounts". This amendment is necessary for consistency within the rules.

Item H is amended to remove the requirement that employers keep separation records for individuals performing services, and language from existing Item I is moved into this provision. Requiring the retention of separate information is unnecessary and burdensome, because the Department does not, and never has, audited for this purpose. The provision is further amended to remove "of the employee" after the address-record requirement in recognition that not all individuals who perform services for an employer are employees. The amendment thus provides clarity and ensures that employers are keeping appropriately thorough records.

Item J is proposed for deletion. The amendment is reasonable because the Department does not use this information, and the record-keeping requirement is therefore unnecessary and burdensome.

Item K is proposed for deletion. The basic record-keeping requirement is proposed to be added to Item C, and the additional requirements in Item K are contained in subpart 3 of this rule. The amendment is reasonable to remove duplicate language from the rules to achieve clarity.

**Subpart 2.** The proposed amendment to subpart 2 provides clarity and precision of language by referring to services performed "both in Minnesota and outside Minnesota," instead of saying "within and without Minnesota."

Item A and Item B are amended generally to remove the requirement that employers keep records of the city or county services are performed in. The amended rule would require records only of state(s) where an individual performs services. The Department does not use the more specific city or county information, and the amendment is reasonable to remove the record-keeping burden from employers. The reference to a statutory definition of "base of operations" is also removed because that statutory provision no longer exists. The amendment would also require records of the "state from which the services are directed and controlled," regardless of whether the base of operation does or does not exist in that state. The amendment is necessary to provide the Department with accurate information.

**Subpart 3**. Subpart 3 is amended to remove references to "uncovered" employment, and to change those references to "noncovered" employment. "Noncovered" employment is defined by Minnesota Statutes, section 268.035, subdivision 20 (2012), and the statute does not use the phrase "uncovered." The amendment is reasonable to provide consistency within the rules and the statute.

**REPEALER**

The Department proposes several rules for repeal, consistent with our 2013 Obsolete Rules Report, the Department's goal of providing clear, and concise rules, and the administration's goal of the unsession. For ease of understanding, the rules are grouped by topic.

The repeal would include rules **3310.2902, subpart 2**, and **3310.2919**. These two rules are proposed for repeal in order to provide conformity within the rules. Rule 3310.2902, subpart 2 includes a definition of "appeals office," which is no longer needed if the proposed amendments are approved. Rule 3310.2919 includes a "data practices notice," which is provided for in rule 3310.2921, subparts A and G in its amended form. It is reasonable to include this requirement in the "conduct of hearing" portion of the rules, as opposed to a separate rule in order to clearly explain the process to hearing participants.

The repeal also includes rules **3315.0200, subpart 1**; **3315.0203**; **3315.0211**; **3315.0212, subparts 2 and 3**; **and 3315.0213**. These rules are additional definitions of "wages" beyond those provided for in Minnesota Statute, section 268.035, subdivision 29 (2012). These rules, which aim only to provide additional guidance, are unnecessary and have never been utilized.

The repeal further includes rules **3315.0801**; **3315.0805**; **3315.0810**; **3315.0815**; **3315.0820**; **3315.0825**; **3315.0830**; **3315.0835**; **3315.0840**; and **3315.0845**. These rules provide additional definitions to terms used in chapter 268 related to agriculture. These rules, which aim only to provide additional guidance, are unnecessary and have never been utilized.

Finally, the repeal includes rules **3315.0910** and **3315.0905.** These rules provide additional definitions to terms used in chapter 268. These rules, which aim only to provide additional guidance, are unnecessary and have never been utilized.

**LIST OF EXHIBITS**

In support of the needs for and reasonableness of the proposed rules, the Department anticipates that it will enter the following exhibits into the hearing record:

| | |
|---|---|
| APPENDIX I | Interpreter Requests by Language, Fiscal Year 2012, Affidavit |
| APPENDIX II | Weekly UI Status Report, Monday December 9, 2013 |

**LIST OF WITNESSES**

Craig Gustafson, Chief Unemployment Law Judge

Lee Nelson, Legal Counsel

Christine Hinrichs, Staff Attorney

**CONCLUSION**

Based on the foregoing, the proposed rules are both needed and reasonable.

Date: 12-19-13

K. Clark Sieben

Katie Clark Sieben, Commissioner

# TOTALS 7/1/2011-6/30/2012

Fiscal Year 2012

| | |
|---|---|
| Amharic | 23 |
| Arabic | 21 |
| Bosnian | 3 |
| Cambodian | 5 |
| Cantonese | 2 |
| Chinese | 5 |
| Filipino (Tagalog) | 4 |
| French | 10 |
| Hmong | 44 |
| Laotian | 20 |
| Liberian | 0 |
| Mandarin | 0 |
| Mandingo | 0 |
| Nuer | 8 |
| Oromo | 34 |
| Pidgin | 0 |
| Russian | 20 |
| Somali | 224 |
| Spanish | 126 |
| Swahili | 1 |
| Thai | 0 |
| Twi | 3 |
| Vietnamese | 26 |
| Korean | 3 |
| Anuak | 3 |
| Tigrinya | 8 |
| Khmer | 4 |
| Lingala | 2 |
| Dinka | 1 |
| Kurdish | 1 |
| Gujarati | 2 |
| Ukrainian | 1 |
| Tibetan | 1 |
| Farsi | 1 |
| Lorma | 1 |
| Polish | 1 |
| Burmese | 1 |
| **TOTAL** | **609** |

Appendix I

**MINNESOTA DEPARTMENT OF EMPLOYMENT & ECONOMIC DEVELOPMENT**

**AFFIDAVIT OF**
**MARY KLINKHAMMER**

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State of Minnesota)
) ss.
County of Ramsey)

Mary Klinkhammer, being duly sworn, hereby states:

1. I am an employee with the Unemployment Insurance division of the Minnesota Department of Employment & Economic Development.

2. I compiled a spreadsheet of interpreter requests for the 2012 fiscal year. I created this spreadsheet by examining the billing statements from all agencies used by the Department for interpretive services over the fiscal year. Each billing statement includes the requested language.

3. The spreadsheet is a true and correct reflection of the interpretive services used by the Department for unemployment insurance hearings in fiscal year 2012.

Further your affiant sayeth not.

Mary Klinkhammer

Subscribed and sworn to before me this 12TH day of December, 2013.

Notary Public

DAN W. SIMPSON
Notary Public
State of Minnesota
My Commission Expires
January 31, 2015

Unemployment Insurance
Minnesota

# Weekly UI Status Report

*Monday, December 9, 2013*

## Program Perspective

### Weekly UI Trust Fund Balance

| Week Ending | UI Trust Fund Balance |
|---|---|
| 11/16/13 | $1,194,028,146 |
| 11/23/13 | $1,187,354,943 |
| 11/30/13 | $1,177,675,733 |
| **12/07/13** | **$1,164,050,991** |

### Weekly Requests for Benefit Payments

| Week Ending | Regular UI | Federal EUC | TRA | Total Requests |
|---|---|---|---|---|
| 11/16/13 | 46,175 | 12,095 | 709 | 58,979 |
| 11/23/13 | 50,698 | 12,300 | 792 | 63,790 |
| 11/30/13 | 52,428 | 11,632 | 568 | 64,628 |
| **12/07/13** | **65,721** | **12,588** | **887** | **79,196** |

### Weekly UI Paid by Program

| Week Ending | Regular UI | Federal EUC | TRA | Total $ |
|---|---|---|---|---|
| 11/16/13 | $11,592,596 | $2,855,312 | $229,238 | $14,677,146 |
| 11/23/13 | $12,999,625 | $2,971,467 | $247,500 | $16,218,592 |
| 11/30/13 | $13,457,650 | $2,884,630 | $212,841 | $16,555,121 |
| **12/07/13** | **$16,796,235** | **$3,105,219** | **$267,776** | **$20,169,230** |

### New and Reactivated Accounts

| Week Ending | New Reg. UI | Reactivated Reg. UI | Total |
|---|---|---|---|
| 11/16/13 | 4,401 | 2,734 | 7,135 |
| 11/23/13 | 5,410 | 3,067 | 8,477 |
| 11/30/13 | 5,098 | 3,361 | 8,459 |
| **12/07/13** | **7,304** | **4,667** | **11,971** |

### Exhaustions

| Week Ending | Extension Exhaustions | UI Not Eligible for an Extension | Total Exhaustions |
|---|---|---|---|
| 11/16/13 | 396 | 68 | 464 |
| 11/23/13 | 399 | 51 | 450 |
| 11/30/13 | 417 | 52 | 469 |
| **12/07/13** | **433** | **72** | **505** |

# Customer Perspective

**Call Volume Staff** (Staff assisted calls from employers and applicants)

| Week Ending | Monday | Tuesday | Wednesday | Thursday | Friday | Total |
|---|---|---|---|---|---|---|
| 11/16/13 | Holiday | 4,582 | 2,779 | 2,431 | 2,194 | 11,986 |
| 11/23/13 | 4,264 | 2,889 | 2,619 | 2,277 | 2,322 | 14,371 |
| 11/30/13 | 4,309 | 3,164 | 2,579 | Holiday | Holiday | 10,052 |
| **12/07/13** | **5,550** | **3,427** | **2,938** | **2,721** | **2,716** | **17,352** |

**Average Wait Time** (Staff assisted calls from employers and applicants) minutes: seconds

| Week Ending | Monday | Tuesday | Wednesday | Thursday | Friday | Average |
|---|---|---|---|---|---|---|
| 11/16/13 | Holiday | 3:38 | 1:48 | 1:23 | 1:01 | 2:16 |
| 11/23/13 | 0:46 | 1:08 | 1:39 | 0:43 | 0:50 | 1:00 |
| 11/30/13 | 1:42 | 1:08 | 1:20 | Holiday | Holiday | 1:26 |
| **12/07/13** | **2:31** | **1:02** | **1:45** | **0:47** | **1:16** | **1:38** |

# Performance Perspective

**Applicant Payment Authorizations**

| Requested Week Ending Date | Regular UI Payment Authorizations | % of Payment Authorizations Made Within Two Days of Request |
|---|---|---|
| 11/02/13 | 38,348 | 95.1 % |
| 11/09/13 | 40,961 | 94.5 % |
| 11/16/13 | 44,313 | 95.7 % |
| **11/23/13** | **48,573** | **95.7 %** |

**Determinations of Eligibility**

| Week Ending | Determinations of Eligibility | Avg. # of Days: Issue Detection to Mailing (parties have up to 10 days to respond to requests for information) |
|---|---|---|
| 11/16/13 | 3,237 | 12.5 |
| 11/23/13 | 4,161 | 11.5 |
| 11/30/13 | 2,352 | 12.8 |
| **12/07/13** | **4,916** | **13.0** |

**Appeals Filed vs. Decisions Mailed**

| Week Ending | Appeals Filed | Decisions Mailed (mail date this week) |
|---|---|---|
| 11/16/13 | 506 | 445 |
| 11/23/13 | 559 | 560 |
| 11/30/13 | 379 | 361 |
| **12/07/13** | **611** | **542** |

**Days from Appeal Date to Decision Mail Date** (Federal Standard = 60%)

| Week Ending | Percent ≤ 30 Days (weekly) |
|---|---|
| 11/16/13 | 90 % |
| 11/23/13 | 92 % |
| 11/30/13 | 94 % |
| **12/07/13** | **89 %** |