

CHAPTER 7190

MINNESOTA POLLUTION CONTROL AGENCY

HARMFUL SUBSTANCE CLAIMS, COMPENSATION

	DEFINITIONS		7190.0107	PAYMENT OF COMPENSATION.
7190.0001	DEFINITIONS.		7190.0108	PRIMARY EMPLOYMENT SCHEDULES.
	CLAIM APPLICATION			DEATH BENEFITS
7190.0005	REPRESENTATION.		7190.1000	DEFINITIONS.
7190.0006	APPLICATION FOR COMPENSATION.		7190.1005	PAYMENT OF CLAIMS WHEN CLAIMANT DIES.
7190.0007	CLAIM ACCEPTANCE.		7190.1010	PRIORITY FOR DEATH BENEFITS.
7190.0008	CLAIM REVIEW.		7190.1015	ELIGIBLE DEPENDENTS.
7190.0009	CLAIM ACCESS.		7190.1020	FACTORS GOVERNING AWARD OF DEATH BENEFITS.
7190.0010	CLAIM AMENDMENT.		7190.1025	ELIGIBLE ALLOWANCES FOR PRESUMED DEPENDENTS.
7190.0011	CLAIM CONSOLIDATION.		7190.1026	ELIGIBLE ALLOWANCES FOR ESTABLISHED DEPENDENTS.
7190.0012	CLAIM DISMISSAL.			PROPERTY DAMAGE LOSSES
7190.0013	EMERGENCY COMPENSATION.		7190.1100	DEFINITIONS.
7190.0014	CLAIM INVESTIGATION.		7190.1110	PRINCIPAL RESIDENCE.
7190.0015	CLAIM DETERMINATION.		7190.1120	CURRENT PRINCIPAL RESIDENCE.
7190.0016	REOPENING A CLAIM.		7190.1130	RESIDENCE OWNED BUT NOT OCCUPIED.
7190.0017	PAYMENT OF COMPENSATION.		7190.1140	PROPERTY PURCHASED AFTER DATE OF DISCOVERY.
	ATTORNEY FEES FOR PROPERTY DAMAGE CLAIMS		7190.1150	INTENDED PRINCIPAL RESIDENCE.
7190.0020	ATTORNEY FEES.		7190.1160	PAST PRINCIPAL RESIDENCE.
	HOUSEHOLD LABOR COMPENSATION		7190.1170	RESIDENTIAL PROPERTY THAT HAS BEEN SOLD.
7190.0100	DEFINITIONS.		7190.1180	TWO PROPERTIES MAY QUALIFY.
7190.0101	HOUSEHOLD LABOR LOSSES ELIGIBLE FOR COMPENSATION.		7190.1190	ELIGIBLE LOSSES RELATED TO REPLACEMENT OR DECONTAMINATION OF PRIMARY SOURCE OF DRINKING WATER.
7190.0102	FACTORS AFFECTING THE AMOUNT OF HOURS SPENT ON HOUSEHOLD LABOR.		7190.2000	HARDSHIP.
7190.0103	CALCULATION OF THE AMOUNT OF HOURS SPENT ON HOUSEHOLD LABOR.		7190.2010	ELIGIBLE LOSSES ASSOCIATED WITH THE NEED TO MAINTAIN TWO RESIDENCES.
7190.0104	CALCULATION OF HOURLY WAGE FOR HOUSEHOLD LABOR.			
7190.0105	DISABILITY.			
7190.0106	CALCULATION OF LOSS IN HOUSEHOLD LABOR.			

DEFINITIONS

7190.0001 DEFINITIONS.

Subpart 1. **Scope.** The terms used in this chapter have the meanings given them in Minnesota Statutes, chapter 115B and in this part.

Subp. 2. [Repealed, L 2002 c 379 art 2 s 24]

Subp. 3. **Days.** "Days" means calendar days.

Subp. 4. [Repealed, L 2002 c 379 art 2 s 24]

Subp. 5. **Staff.** "Staff" means a staff member of the Pollution Control Agency.

Statutory Authority: *MS s 115B.28*

History: *11 SR 2077; L 1989 c 325 s 41; L 2002 c 379 art 2 s 23,24*

7190.0002 [Repealed, L 2002 c 379 art 2 s 24]

7190.0003 [Repealed, L 2002 c 379 art 2 s 24]

7190.0004 [Repealed, L 2002 c 379 art 2 s 24]

CLAIM APPLICATION

7190.0005 REPRESENTATION.

A claimant may authorize a representative to complete the application for compensation and represent the claimant in all communication and proceedings involving the Pollution Control Agency. The representative may be an attorney or other

MINNESOTA RULES 2003

1623

HARMFUL SUBSTANCE CLAIMS, COMPENSATION 7190.0007

individual which the claimant has authorized in writing to the agency to act in that capacity. The agency will notify the claimant and the claimant's representative of actions pertaining to a claim.

Statutory Authority: *MS s 115B.28*

History: *11 SR 2077; L 2002 c 379 art 2 s 23*

7190.0006 APPLICATION FOR COMPENSATION.

A claimant must apply for compensation within the time limits established by Minnesota Statutes, section 115B.30, subdivision 3. The application must be on a form supplied by the Pollution Control Agency, containing substantially the following:

A. the name, address, telephone number, social security number, and age of the claimant;

B. the name, address, and telephone number of the claimant's employer if the claimant is seeking compensation for personal injury or claiming hardship;

C. the name, address, telephone number, and relationship to the claimant of any representative;

D. the identity of the harmful substances to which the claimant was exposed;

E. a description of the property damage or personal injury;

F. the date the claimant discovered the property damage or the personal injury;

G. the date the claimant discovered the connection between the injury or property damage and the exposure to harmful substances and an explanation of how the connection was discovered;

H. the name, address, and phone number of any medical practitioner who examined the claimant regarding the personal injury;

I. in the case of death as a personal injury, the cause of death on the death record and the report of an autopsy if performed;

J. the identity of any government agency or official that the claimant contacted concerning the presence of harmful substances;

K. the identity, if the claimant knows, of the source of the harmful substances related to the exposure, including the location of the source and the person responsible for the release;

L. the duration and location of the exposure to the substances;

M. the amount of compensation the claimant seeks from the agency for the property damage or personal injury including losses for medical expenses, lost wages, or income and lost household labor;

N. the amount of reimbursement the claimant has received for losses and identification of the sources of reimbursement;

O. a description of actions the claimant has taken if any to recover compensation from the person responsible for the release of the harmful substance;

P. a statement signed by the claimant, certifying under oath the accuracy and completeness of the information provided;

Q. an authorization signed by the claimant for access to medical and financial records if the compensation requested is for personal injury or hardship; and

R. other relevant information the agency deems essential to a determination on the application.

Statutory Authority: *MS s 115B.28*

History: *11 SR 2077; L 1989 c 325 s 78; L 2001 1SP9 art 15 s 32; L 2002 c 379 art 2 s 23*

7190.0007 CLAIM ACCEPTANCE.

Subpart 1. **Claim acceptance.** A claim shall begin when the Pollution Control Agency accepts for filing an application for compensation. The agency shall accept for

filing an application that the agency determines is from an eligible person, and cites injury or damage described as eligible for compensation in Minnesota Statutes, chapter 115B.

Subp. 2. **Refusal to accept.** If the agency determines that the application is ineligible, the agency will forward the application to staff. The staff member will review the application and the agency's determination and render a written decision on the eligibility of the application within 14 days. If the staff member determines the application is ineligible, the agency will notify the applicant in writing of the refusal to accept the application for filing and the reasons for finding it ineligible. The agency shall report at the regular meeting of the agency on the number of applications determined since the previous meeting to be ineligible and the reasons for ineligibility.

Subp. 3. **Refiling an application.** An applicant may not appeal a determination of ineligibility but may submit another application if that application contains new information relevant to determining eligibility.

Statutory Authority: *MS s 115B.28*

History: *11 SR 2077; L 2002 c 379 art 2 s 23*

7190.0008 CLAIM REVIEW.

Subpart 1. [Repealed, L 2002 c 379 art 2 s 24]

Subp. 2. [Repealed, L 2002 c 379 art 2 s 24]

Subp. 3. **Claims lacking required information.** If the Pollution Control Agency determines the claim lacks required information, the agency will provide the claimant written notice describing the required information, the time limits for providing the information, and the consequences of not providing the required information.

Subp. 4. **Extensions of time for providing required information.** If a claimant cannot provide the required information within the designated time limits, the claimant may request from the agency an extension of time. The request must be made as soon as reasonably practicable and be in writing. It must give the reasons the extension is needed and the date the information will be provided. The agency may approve a request for extension of time. If the agency determines a request for extension of time should be denied, the agency will submit the request and the agency's determination to agency staff. The agency staff will issue a written decision to grant or deny the extension. The agency will notify the claimant in writing of the decision to grant or deny as soon as practicable after the claimant makes the request.

Statutory Authority: *MS s 115B.28*

History: *11 SR 2077; L 2002 c 379 art 2 s 23,24*

7190.0009 CLAIM ACCESS.

During the time a claim is pending before the Pollution Control Agency, the application, supporting documents, and information gathered by the agency shall be available only to members of the agency, the agency's staff, attorney, and authorized consultants. Claim data in summary form or other form that does not identify the claimant may be distributed. The final decision of the agency shall be available to the public.

Statutory Authority: *MS s 115B.28*

History: *11 SR 2077; L 2002 c 379 art 2 s 23*

7190.0010 CLAIM AMENDMENT.

A claimant must promptly notify the Pollution Control Agency in writing upon learning of additional personal injury or property damage potentially related to a pending claim. The agency will determine whether to permit an amendment of the pending claim.

Statutory Authority: *MS s 115B.28*

History: *11 SR 2077; L 2002 c 379 art 2 s 23*

MINNESOTA RULES 2003

1625

HARMFUL SUBSTANCE CLAIMS, COMPENSATION 7190.0015

7190.0011 CLAIM CONSOLIDATION.

The agency may consolidate two or more related claims if:

- A. the claims arise from the same release; or
- B. the claims present substantially the same issues; and
- C. the consolidation would not prejudice the rights of any claimant; and
- D. the consolidation is administratively practical.

Statutory Authority: *MS s 115B.28*

History: *11 SR 2077; L 2002 c 379 art 2 s 23*

7190.0012 CLAIM DISMISSAL.

The Pollution Control Agency may dismiss a claim when:

- A. the claimant refuses to supply requested information, including undergoing mental or physical examination;
- B. the claimant receives an award from the responsible person;
- C. the claimant has falsified or withheld information relevant to the claim; or
- D. the claimant refuses to appear before the agency when ordered.

Statutory Authority: *MS s 115B.28*

History: *11 SR 2077; L 2002 c 379 art 2 s 23*

7190.0013 EMERGENCY COMPENSATION.

A claimant may submit a written request to the Pollution Control Agency for emergency compensation for expenses related to a pending claim. The agency must respond to the request within 30 days. The agency shall determine whether to grant emergency compensation as described in Minnesota Statutes, section 115B.28, subdivision 2, clause (3), using the following criteria:

A. the failure to receive the emergency compensation may create a life-threatening or other seriously disruptive situation such as loss of critical medical care, loss of residence, or loss of other basic necessities; and

B. the emergency compensation is not likely to be provided by other sources of assistance available to the claimant.

The agency may award emergency compensation only to the extent necessary to meet immediate expenses.

Statutory Authority: *MS s 115B.28*

History: *11 SR 2077; L 2002 c 379 art 2 s 23*

7190.0014 CLAIM INVESTIGATION.

Pollution Control Agency staff other than the staff assigned to the investigation shall not discuss with the claimant outside an agency meeting the status of the investigation.

Statutory Authority: *MS s 115B.28*

History: *11 SR 2077; L 2002 c 379 art 2 s 23*

7190.0015 CLAIM DETERMINATION.

Subpart 1. [Repealed, L 2002 c 379 art 2 s 24]

Subp. 2. [Repealed, L 2002 c 379 art 2 s 24]

Subp. 3. **Claimant review of protected information.** Within 30 days of receiving the final decision of the Pollution Control Agency, a claimant may request to review protected information relevant to the final determination of the claim. The claimant must agree in writing to maintain the confidentiality of such information under Minnesota Statutes, section 115B.35.

Statutory Authority: *MS s 115B.28*

History: *11 SR 2077; L 2002 c 379 art 2 s 23,24*

MINNESOTA RULES 2003

7190.0016 HARMFUL SUBSTANCE CLAIMS, COMPENSATION

1626

7190.0016 REOPENING A CLAIM.

Within a reasonable time, not to exceed six years from the final determination of a claim, the Pollution Control Agency may reopen the investigation of a claim upon the presentation of new material evidence which with reasonable diligence could not have been found and produced at the time of the claim determination.

Statutory Authority: *MS s 115B.28*

History: *11 SR 2077; L 2002 c 379 art 2 s 23*

7190.0017 PAYMENT OF COMPENSATION.

Subpart 1. Claimant payment. Payment of all compensation shall be directly to the claimant.

Subp. 2. Subrogation. An offer of compensation from the Pollution Control Agency shall be subject to the claimant assigning to the agency the claimant's rights to recover losses from other sources. The claimant shall agree to cooperate fully with the agency in any subrogation action brought by the agency.

Subp. 3. Acceptance deadline. A claimant must accept or reject in writing an offer of compensation from the agency within 30 days of receiving the offer. If the agency receives no response from the claimant, the agency shall consider the offer rejected.

Statutory Authority: *MS s 115B.28*

History: *11 SR 2077; L 2002 c 379 art 2 s 23*

ATTORNEY FEES FOR PROPERTY DAMAGE CLAIMS

7190.0020 ATTORNEY FEES.

Subpart 1. Entitlement. An attorney is entitled to a fee for representing a claimant in a property damage claim before the Pollution Control Agency if the claimant accepts an award from the agency. Representation includes preparation involved in filing an application, monitoring the claim progress, communication with the agency and appearances before the agency.

Subp. 2. Maximum fee. The fee must not exceed 15 percent of the amount the agency awards the claimant for the property damage.

Subp. 3. Variance not binding. An agreement between the attorney and client that attempts to vary or change the provisions of this part is not binding upon the attorney and the client.

Statutory Authority: *MS s 115B.37*

History: *12 SR 1710; L 2002 c 379 art 2 s 23*

HOUSEHOLD LABOR COMPENSATION

7190.0100 DEFINITIONS.

Subpart 1. Scope. The terms used in parts 7190.0100 to 7190.0108 have the meanings given them in this part.

Subp. 2. [Repealed, L 2002 c 379 art 2 s 24]

Subp. 3. Children. "Children" means household members under the age of 18.

Subp. 4. Claimant. "Claimant" means a person whom the Pollution Control Agency determines has an eligible claim for personal injury.

Subp. 5. Disability. "Disability" means an impairment in the ability to produce goods and services necessary for the household to function.

Subp. 6. Household. "Household" means a single housekeeping unit. A household may consist of a single person or several persons, usually but not necessarily, related by blood or marriage.

Subp. 7. **Household labor.** "Household labor" means the production of goods and services necessary for the household to function, including marketing, record keeping, food preparation, house cleaning, house maintenance, yard care, clothing care, and physical and other care of household members.

Subp. 8. **Houseworker.** "Houseworker" means a person who performs household labor in a household.

Subp. 9. **Minimum wage.** "Minimum wage" means the amount set in United States Code, title 29, section 206.

Subp. 10. **Primary houseworker.** "Primary houseworker" means the person who contributes the majority of time spent in a household on household labor.

Subp. 11. **Secondary houseworker.** "Secondary houseworker" means a person who contributes a significant amount of time but less than the majority of time spent in a household on household labor.

Subp. 12. **Teenage houseworker.** "Teenage houseworker" means a person from the ages of 12 to 17 who produces goods or services necessary for the household but is not primarily responsible for the household labor, and is a financially dependent household member.

Statutory Authority: *MS s 115B.34 subd 1 para (e)*

History: 12 SR 846; L 1989 c 325 s 41; L 2002 c 379 art 2 s 23,24

7190.0101 HOUSEHOLD LABOR LOSSES ELIGIBLE FOR COMPENSATION.

Subpart 1. **Scope.** The Pollution Control Agency shall compensate a claimant for the value of past, current, and future household labor lost due to the claimant's injury or disease.

Subp. 2. **Past years.** The agency shall calculate the number of eligible years of losses in the past beginning with the date on which the claimant's injury was diagnosed by a physician.

Subp. 3. **Future years.** The agency shall calculate the number of eligible years of losses in the future using the claimant's average remaining lifetime as determined by United States Life Tables, Volume 43A Minnesota Statutes Annotated, which is incorporated by reference. This publication is available for loan or inspection through the Minitex interlibrary loan system.

Statutory Authority: *MS s 115B.34 subd 1 para (e)*

History: 12 SR 846; L 2002 c 379 art 2 s 23

7190.0102 FACTORS AFFECTING THE AMOUNT OF HOURS SPENT ON HOUSEHOLD LABOR.

In calculating the hours spent on household labor, the Pollution Control Agency shall consider whether the claimant:

- A. is in a living arrangement with other persons;
- B. is a primary, secondary, or teenage houseworker;
- C. resides in a household where the primary houseworker is employed outside the household 15 or more hours per week; or
- D. provides services and care for children, and, if so, the number and ages of the children.

Statutory Authority: *MS s 115B.34 subd 1 para (e)*

History: 12 SR 846; L 2002 c 379 art 2 s 23

7190.0103 CALCULATION OF THE AMOUNT OF HOURS SPENT ON HOUSEHOLD LABOR.

Subpart 1. **Base hours.** The Pollution Control Agency shall determine the number of household labor hours contributed by the claimant by using part 7190.0108, schedule A or B.

Subp. 2. **Schedule A.** Schedule A applies to a claimant who lives in a household where the primary houseworker is not employed outside the household or employed less than 15 hours per week outside the household.

Subp. 3. **Schedule B.** Schedule B applies to a claimant who lives in a household where the primary houseworker is employed 15 or more hours per week outside the household.

Subp. 4. **Applicable living arrangement.** The agency shall determine the hours eligible for compensation from the appropriate schedule as follows:

A. if the claimant is part of a married couple, or demonstrates the claimant is part of a married couple equivalent, the number of hours in the schedule for the claimant's houseworker role (primary or secondary houseworker, with or without children) is the number of hours eligible for compensation;

B. if the claimant is a single parent, the only adult in a household with children, the total of the hours for a primary and secondary houseworker is the number of hours eligible for compensation;

C. if the claimant lives alone, the number of hours for a primary houseworker is the number of hours eligible for compensation;

D. if the claimant lives with one or more other adults, the number of hours for a secondary houseworker in part 7190.0108, subpart 2, is the number of hours eligible for compensation; and

E. if the claimant is a teenage houseworker, the number of hours for a teenage houseworker is the number of hours eligible for compensation. When a teenage houseworker becomes 18 years old, the number of hours for a secondary houseworker is the number of hours eligible for compensation.

The agency shall consider that children under the age of 12 produce no hours eligible for compensation.

Subp. 5. **Exception to schedule.** The agency may determine the number of hours eligible for compensation without using a schedule when:

A. the claimant's living arrangement is not covered by the schedule;

B. the claimant provides evidence that the division of household labor in the claimant's household significantly deviates from the schedule's division; or

C. the claimant demonstrates that special circumstances in the claimant's household such as a disabled spouse, child, or parent significantly increase the total amount of hours spent on household labor.

Subp. 6. **Determination of yearly hours spent.** The agency shall calculate the number of hours spent on household labor in any year by multiplying the schedule base value by 12. For partial years, the agency shall calculate the actual number of months where household labor was lost and multiply the schedule base value by that number.

Statutory Authority: *MS s 115B.34 subd 1 para (e)*

History: *12 SR 846; L 2002 c 379 art 2 s 23*

7190.0104 CALCULATION OF HOURLY WAGE FOR HOUSEHOLD LABOR.

Subpart 1. **Salary determination.** For each year in which the Pollution Control Agency calculates an adult claimant has hours eligible for compensation, the agency shall determine the hourly wage for household labor using the state median monthly salary for janitors as determined in the annual salary survey conducted by the Department of Economic Security. For each future year, the agency shall calculate the hourly wage using the current year's salary survey data.

Subp. 2. **Formula.** For each year in which a claimant has hours eligible for compensation, the agency shall calculate the hourly wage using the following formula:

$$W = \frac{S}{173.33}$$

MINNESOTA RULES 2003

1629

HARMFUL SUBSTANCE CLAIMS, COMPENSATION 7190.0107

Where:

W = hourly wage for that year

S = state median monthly salary for janitors for that year

173.33 = the number of hours in a work month

Subp. 3. **Teenage houseworker.** For each past year in which a teenage houseworker has eligible hours, the agency shall use the minimum wage in that year as the hourly wage for household labor; for the current year and future years until the year the teenage houseworker becomes 18 years old the agency shall use the current minimum wage.

Statutory Authority: *MS s 115B.34*

History: *12 SR 846; L 1994 c 483 s 1; L 2002 c 379 art 2 s 23*

7190.0105 DISABILITY.

For each past year in which the Pollution Control Agency calculates a claimant has hours eligible for compensation, the agency shall determine to what extent the claimant's injury or disease impaired the claimant's ability to perform household labor. For the current year and future years in which a claimant has hours eligible for compensation, the agency shall determine to what extent the claimant's injury or disease presently impairs the claimant's ability to perform household labor.

In making the determination of disability, the agency shall consider the quality and quantity of household labor services the claimant:

- A. can or could no longer perform;
- B. performs or performed with assistance;
- C. continues or continued to perform.

The agency shall set a claimant's disability for any year at 100 percent, 75 percent, 50 percent, 25 percent, or zero.

Statutory Authority: *MS s 115B.34 subd 1 para (e)*

History: *12 SR 846; L 2002 c 379 art 2 s 23*

7190.0106 CALCULATION OF LOSS IN HOUSEHOLD LABOR.

For each year in which the claimant has a loss in household labor, the Pollution Control Agency shall determine the claimant's loss using the following formula:

$$V = H \times W \times D$$

Where:

V = value of the household labor lost in that year

H = number of hours eligible for compensation in that year

W = hourly wage for household labor for that year

D = percent disabled in that year

Statutory Authority: *MS s 115B.34 subd 1 para (e)*

History: *12 SR 846; L 2002 c 379 art 2 s 23*

7190.0107 PAYMENT OF COMPENSATION.

Subpart 1. **Payment limit.** The total compensation the Pollution Control Agency shall pay to a claimant for household labor lost shall not exceed the limits in Minnesota Statutes, sections 115B.34, subdivision 1, and 115B.36.

Subp. 2. **Payment in lump sum.** The agency will calculate the total lump sum amount of compensation to be paid to a claimant using the following formula:

$$A = P + C + F$$

Where:

A = award amount in current dollars

P = the sum of all past years' losses

C = the loss for the current year

F = the sum of all future years' losses, with each year discounted to current value according to Minnesota Statutes, section 604.07, subdivision 4, clauses (1) and (2)

Subp. 3. **Payment in installments.** When the agency chooses to pay the award in installments, it shall adjust future payments by the cost of living rate for the current year as described in Minnesota Statutes, section 604.07, subdivision 4, clause (2).

Statutory Authority: *MS s 115B.34 subd 1 para (e)*

History: *12 SR 846; L 2002 c 379 art 2 s 23*

MINNESOTA RULES 2003

1631

HARMFUL SUBSTANCE CLAIMS, COMPENSATION 7190.0108

7190.0108 PRIMARY EMPLOYMENT SCHEDULES.

Subpart 1. Schedule A: Primary Houseworker Not Employed Outside Household or Employed Less Than 15 Hours Per Week.

		Base Hours Spent in Household Labor Per Month															
		15	30	45	60	90	120	150	180	210	240	270	300	330	360		
# Children in Family	Age in Years																
0	Primary Houseworker																
	under 25		S					P									
	25-39		S					P									
	40-54			S				P									
	55 & over				S			P									
1	Youngest Child																
	12-17		T		S					P							
	6-11			S						P							
	2-5				S					P							
	1					S						P					
	under 1					S						P					
2	12-17		T	S						P							
	6-11		T	S						P							
	2-5		T		S							P					
	1					S							P				
	under 1					S								P			
3	12-17		ST							P							
	6-11		T	S						P							
	2-5		T		S							P					
	1					S							P				
	under 1					S								P			
4	12-17		ST						P								
	6-11		T	S								P					
	2-5		T		S								P				
	1		T			S							P				
	under 1					ST										P	
5-6	6-11			T	S								P				
	2-5		T		S								P				
	1		T			S						P					
	under 1		T			S								P			
7-9	2-5		T		S								P				
	1							n/a									
	under 1		T			S											P

P denotes primary houseworker
 S denotes secondary houseworker
 T denotes teenage houseworker

MINNESOTA RULES 2003

7190.0108 HARMFUL SUBSTANCE CLAIMS, COMPENSATION

1632

Subp. 2. Schedule B: Primary Houseworker Employed 15 or More Hours Per Week Outside Household.

		Base Hours Spent in Household Per Month															
# Children in Family	Age in Years	15	30	45	60	90	120	150	180	210	240	270	300	330	360		
0	Primary Houseworker																
	under 25			S			P										
	25-39			S			P										
	40-54		S				P										
	55 & over		S				P										
1	Youngest Child																
	12-17		T		S			P									
	6-11		S						P								
	2-5					S		P									
	1					S			P								
	under 1					S			P								
2	12-17		T	S				P									
	6-11		T	S				P									
	2-5		T			S			P								
	1					S			P								
	under 1					S					P						
3	12-17		T	S			P										
	6-11			ST					P								
	2-5			T		S					P						
	1					S					P						
	under 1					S				P							
4	12-17		S	T					P								
	6-11		TS					P									
	2-5																
	1																
	under 1																
5-6	6-11																
	2-5																
	1																
	under 1																
7-9	2-5																
	1																
	under 1																

P denotes primary houseworker
S denotes secondary houseworker
T denotes teenage houseworker

Statutory Authority: *MS s 115B.34 subd 1 para (e)*

History: 12 SR 846

DEATH BENEFITS

7190.1000 DEFINITIONS.

Subpart 1. [Repealed, L 2002 c 379 art 2 s 24]

Subp. 2. **Claimant.** "Claimant" means a person who suffered an eligible personal injury as defined in Minnesota Statutes, section 115B.30, subdivision 1.

Subp. 3. **Value of household labor.** "Value of household labor" means the value determined by parts 7190.0100 to 7190.0108.

Subp. 4. **Wage.** "Wage" means the average gross weekly wage received by the claimant for the highest three of the five years immediately preceding death or the date of diagnosis of the injury causing the death, whichever is greater. If the claimant was self-employed, wage means the income of the claimant from the business for the highest three of the five years immediately preceding death or the date of diagnosis of the injury causing the death, whichever is greater. The claimant's dependents may request the Pollution Control Agency use the date of the exposure to the harmful substance to calculate the wage, if the dependents document the date of exposure.

Statutory Authority: *MS s 115B.34 subd 1 para (d)*

History: 12 SR 1710; L 1989 c 325 s 41,78; L 2002 c 379 art 2 s 23,24

7190.1005 PAYMENT OF CLAIMS WHEN CLAIMANT DIES.

Subpart 1. **Death occurring during investigation.** If a claimant dies from an eligible injury during the investigation of the claim, the Pollution Control Agency shall amend the claim so that it seeks compensation for the claimant's estate for medical expenses and death benefits for the claimant's dependents. If the death of the claimant during the investigation is unrelated to the eligible injury, the agency shall amend the claim so that it seeks compensation for the claimant's dependents for eligible losses due to the injury up to the date of death.

Subp. 2. **Death occurring during payout.** If a claimant who is receiving compensation from the agency dies, the agency shall pay the remaining compensation due the claimant to the dependents in the order of the subparts in part 7190.1015. If there are no dependents, the agency shall pay the remaining compensation to the claimant's estate.

Subp. 3. **Death after award.** If a claimant has received compensation from the agency for future loss of wages and household labor due to the injury that caused the death, the agency shall not accept a claim for death benefits.

Statutory Authority: *MS s 115B.34 subd 1 para (d)*

History: 12 SR 1710; L 2002 c 379 art 2 s 23

7190.1010 PRIORITY FOR DEATH BENEFITS.

The Pollution Control Agency shall pay death benefits to eligible dependents of a claimant in the following order:

- A. allowances to presumed dependents;
- B. allowances to wholly supported established dependents in the order in part 7190.1015; and
- C. allowances to partially supported established dependents in the order in part 7190.1015.

Statutory Authority: *MS s 115B.34 subd 1 para (d)*

History: 12 SR 1710; L 2002 c 379 art 2 s 23

7190.1015 ELIGIBLE DEPENDENTS.

Subpart 1. **Presumed dependents.** The Pollution Control Agency shall presume that the following persons are wholly supported dependents of the claimant:

- A. the spouse, unless it is shown that the spouse and claimant were voluntarily living apart at the time of the injury or death;
- B. a child under 18 years old;
- C. a child under 25 years old if regularly attending an accredited educational institution on a full-time basis; and

D. a child 18 years old or older if physically or mentally incapacitated from earning.

Subp. 2. **Established dependents.** The agency shall consider, in the following order, these persons as dependents of the claimant if the persons establish that the claimant contributed regularly to their support:

- A. a child 18 years old or older;
- B. a parent;
- C. a grandparent;
- D. a grandchild;
- E. a sibling; and
- F. a parent-in-law.

Statutory Authority: *MS s 115B.34 subd 1 para (d)*

History: *12 SR 1710; L 2002 c 379 art 2 s 23*

7190.1020 FACTORS GOVERNING AWARD OF DEATH BENEFITS.

Subpart 1. **Limitations.** The Pollution Control Agency shall award death benefits to presumed and established dependents until two-thirds of the claimant's wage is allocated. The agency shall adjust any award of death benefits according to the limitations of Minnesota Statutes, sections 115B.34, subdivision 1, clause (4), and 115B.36. The benefit paid to established dependents shall not exceed the actual contribution by the claimant to their support.

Subp. 2. **Initiation.** The agency shall calculate death benefits from the onset of disability leading to the death of the claimant or from the date of death, taking into consideration when the claimant's financial capability to provide reasonable support for the dependents diminished.

Subp. 3. **Determination of dependents.** The agency shall determine the eligibility of a dependent based on the facts existing on the date of the agency's decision.

Subp. 4. **Lump sum payment.** When the agency chooses to pay death benefits in a lump sum, it shall discount benefits awarded for future years to current value based on real rates of return obtainable through conservative investment.

Subp. 5. **Installment payment.** When the agency chooses to pay death benefits in installments, it shall adjust future payments by the cost of living rate for the current year.

Subp. 6. **Collateral sources.** In calculating the total award of death benefits, the agency shall subtract from the award losses recouped by the dependents from any government survivor program to the extent that the combined total of government survivor benefits and death benefits paid under this chapter exceeds 100 percent of the wage earned by the claimant.

Subp. 7. **Cessation of compensation.** The agency shall cease compensation upon the death of any dependent or upon marriage of any dependent other than the spouse. The cessation of compensation to any dependent does not affect the compensation paid to any other dependent.

Statutory Authority: *MS s 115B.34 subd 1 para (d)*

History: *12 SR 1710; L 2002 c 379 art 2 s 23*

7190.1025 ELIGIBLE ALLOWANCES FOR PRESUMED DEPENDENTS.

Subpart 1. **Spouse, no dependent children.** If the claimant leaves a spouse and no dependent children, the Pollution Control Agency shall pay to the spouse for ten years one-half of the claimant's wage and one-half the value of the claimant's household labor.

Subp. 2. **Spouse, one dependent child.** If the claimant leaves a spouse and one dependent child, the agency shall pay to the spouse for ten years, for the benefit of the spouse and child, three-fifths of the claimant's wage and three-fifths the value of the

claimant's household labor. If the child is not dependent for ten years, the agency shall pay to the spouse one-half the claimant's wage and one-half the value of the claimant's household labor in the years remaining after the child is no longer dependent. If the child is dependent for more than ten years, the agency shall pay to the spouse for the child one-half of the claimant's wage and one-half the value of the claimant's household labor until the child is no longer dependent.

Subp. 3. Spouse, two or more dependent children. If the claimant leaves a spouse and two or more dependent children, the agency shall pay to the spouse for ten years, for the benefit of the spouse and children, two-thirds of the claimant's wage and two-thirds the value of the claimant's household labor. If no child remains dependent for ten years, the agency shall pay to the spouse one-half the claimant's wage and one-half the value of the claimant's household labor in the years remaining after the last child is no longer dependent. If a child is dependent for more than ten years, the agency shall pay to the spouse, for the benefit of the child, one-half of the claimant's wage and one-half the value of the claimant's household labor.

Subp. 4. Dependent children, no spouse. If the claimant leaves a dependent child and no spouse, the agency shall pay to the guardian of the child 55 percent of the claimant's wage and 55 percent of the value of the claimant's household labor; and for two or more children, the agency shall pay to the guardian of the children two-thirds of the claimant's wage and two-thirds the value of the claimant's household labor until the last child is no longer dependent.

Statutory Authority: *MS s 115B.34 subd 1 para (d)*

History: 12 SR 1710; L 2002 c 379 art 2 s 23

7190.1026 ELIGIBLE ALLOWANCES FOR ESTABLISHED DEPENDENTS.

Subpart 1. Parents. If the claimant leaves both parents wholly dependent on the deceased, the Pollution Control Agency shall pay to both parents jointly for ten years, 45 percent of the claimant's wage. If only one parent survives, the agency shall pay to that parent for ten years 35 percent of the claimant's wage. If the claimant lived in the same household as both parents immediately before death, the agency shall pay for ten years, 45 percent of the value of the claimant's household labor to both parents jointly. If the claimant lived in the household of one parent immediately before death, the agency shall pay 35 percent of the value of the claimant's household labor to that parent for ten years.

Subp. 2. Other established dependents. If the claimant leaves a child, grandparent, grandchild, sibling, or parent-in-law wholly dependent, the agency shall pay to that dependent for ten years, 30 percent of the claimant's wage. If the claimant leaves more than one of them, the agency shall pay 35 percent of the claimant's wage divided among them in equal shares.

Subp. 3. Partial support. If an established dependent regularly received only partial financial support from the claimant, the agency shall adjust the eligible allowance in subparts 5 and 6 according to the following formula:

$$b = A \times c/w$$

Where:

b is the benefit to be awarded;

A is the eligible allowance to the dependent;

c is the amount of weekly contribution to the dependent by the claimant; and

w is the wage of the claimant.

Statutory Authority: *MS s 115B.34 subd 1 para (d)*

History: 12 SR 1710; L 2002 c 379 art 2 s 23

PROPERTY DAMAGE LOSSES

7190.1100 DEFINITIONS.

Subpart 1. **Scope.** The terms used in parts 7190.1110 to 7190.2010 have the meanings given them in this part.

Subp. 2. **Contamination.** “Contamination” means:

A. the presence of a harmful substance in or on property that resulted from an intentional or accidental release of the harmful substance from a facility; or

B. the imminent and substantial threat of contamination due to the movement of the harmful substance in the direction of the property, as determined by the Pollution Control Agency or the Department of Health or for agricultural chemical contamination, as determined by the Department of Agriculture or the Department of Health.

Subp. 3. **Date of discovery of contamination.** “Date of discovery of contamination” means the date a claimant discovered or should have discovered the contamination of the property.

Subp. 4. **Harmful substance.** “Harmful substance” has the meaning given in Minnesota Statutes, section 115B.25.

Subp. 5. **Residential homestead.** “Residential homestead” means property that qualifies as the owner’s homestead under Minnesota Statutes, section 273.124. If the homestead is also a family farm as defined in Minnesota Statutes, section 500.24, subdivision 2, paragraph (b), the property includes one acre of the land surrounding the residence, but does not include any other structures that may be located on it.

Statutory Authority: *MS s 115B.34*

History: *16 SR 2162*

7190.1110 PRINCIPAL RESIDENCE.

For purposes of identifying property losses eligible for compensation under Minnesota Statutes, section 115B.34, the principal residence of the claimant is the property that is:

- A. the claimant’s current principal residence under part 7190.1120;
- B. a residence owned but not occupied by the claimant under part 7190.1130;
- C. a residence that was purchased by the claimant after the date of discovery under part 7190.1140;
- D. the claimant’s intended principal residence under part 7190.1150;
- E. the claimant’s past principal residence under part 7190.1160; or
- F. sold by the claimant under part 7190.1170.

Statutory Authority: *MS s 115B.34*

History: *16 SR 2162*

7190.1120 CURRENT PRINCIPAL RESIDENCE.

The current principal residence of the claimant is the property that is the claimant’s residential homestead, except that the residence must be owned and occupied by the claimant, and used for the purposes of a homestead as of the date of discovery of contamination, not the date of assessment.

Statutory Authority: *MS s 115B.34*

History: *16 SR 2162*

7190.1130 RESIDENCE OWNED BUT NOT OCCUPIED.

A residence owned but not occupied by the claimant is eligible as the claimant’s principal residence if it otherwise qualifies under part 7190.1120 and:

- A. the claimant no longer resides at the residence because of marital separation or divorce; or

MINNESOTA RULES 2003

1637

HARMFUL SUBSTANCE CLAIMS, COMPENSATION 7190.1170

B. the claimant is a resident of a nursing home or boarding care facility.

Statutory Authority: *MS s 115B.34*

History: *16 SR 2162*

7190.1140 PROPERTY PURCHASED AFTER DATE OF DISCOVERY.

A residence purchased by the claimant for use as a residential homestead after the date of discovery of contamination is eligible as the claimant's principal residence if it is used as the claimant's residential homestead and the claimant can show that:

A. a written purchase agreement or contract which committed the claimant to purchase the property was made prior to the date of discovery of contamination; or

B. the property was purchased with the reasonable expectation that the property damage would be fully remedied by public or other funding sources without cost to the claimant.

Statutory Authority: *MS s 115B.34*

History: *16 SR 2162*

7190.1150 INTENDED PRINCIPAL RESIDENCE.

Subpart 1. **Description.** Property purchased by the claimant for the purpose of owning and occupying a residence including construction of a new residence on that property is eligible as the claimant's principal residence if the claimant:

A. had purchased the property, or contracted for the purchase of the property, as shown by a written purchase agreement, before the date of discovery of contamination; and

B. can demonstrate to the Pollution Control Agency that before the date of discovery of contamination the claimant intended to occupy a home as a residential homestead on the property.

Subp. 2. **Claimant's intent.** The intent to occupy a principal residence on the property before the date of discovery of contamination, as required in subpart 1, item B, may be demonstrated by construction contracts or plans, a public listing or advertisement to sell the current residence, or other documents or actions that make a similar showing.

Statutory Authority: *MS s 115B.34*

History: *16 SR 2162; L 2002 c 379 art 2 s 23*

7190.1160 PAST PRINCIPAL RESIDENCE.

Residential property owned by the claimant that is unoccupied and actively on the market for sale at the time of the discovery of contamination is eligible as the claimant's principal residence if:

A. the property was the residential homestead of the claimant immediately before or at the time of placing the property on the market; and

B. the commitment to change residence and sell the property, evidenced by a purchase agreement, contract for sale, contract with a realtor, or other documentation of active sale listing by the claimant, was made before the date of discovery of contamination.

Statutory Authority: *MS s 115B.34*

History: *16 SR 2162*

7190.1170 RESIDENTIAL PROPERTY THAT HAS BEEN SOLD.

Residential property that has been sold by the claimant is eligible as the claimant's principal residence if:

A. the property was the residential homestead of the claimant on the date of discovery of contamination; and

B. the claimant was assessed or otherwise realized the loss before the sale or at the time of the sale, or the claimant expressly agrees in the sale agreement to reimburse the buyer when the amount of loss becomes known.

Statutory Authority: *MS s 115B.34*

History: *16 SR 2162*

7190.1180 TWO PROPERTIES MAY QUALIFY.

If a claimant owns both a current principal residence under part 7190.1120 and an intended principal residence under part 7190.1150, both properties are eligible as the claimant's principal residence.

If a claimant owns both a current principal residence under part 7190.1120 and a past principal residence under part 7190.1160, both properties are eligible as the claimant's principal residence.

Statutory Authority: *MS s 115B.34*

History: *16 SR 2162*

7190.1190 ELIGIBLE LOSSES RELATED TO REPLACEMENT OR DECONTAMINATION OF PRIMARY SOURCE OF DRINKING WATER.

Subpart 1. **Limitation.** Property damage losses related to the replacement or decontamination of the primary source of drinking water are limited to the costs of replacement or decontamination of the system that:

- A. services the individual claimant's property only; or
- B. extends distribution of an existing municipal water supply to the property.

The cost of construction of a system that provides for the expansion of the community water system or that provides benefits to the community in general is not eligible.

Subp. 2. **Operational as of date of discovery.** Except as provided in subpart 3, to be eligible for replacement or decontamination expenses, the primary source of drinking water for a claimant's property as described in subpart 1 must be operational and in use by the property owner on the date of discovery of contamination.

Subp. 3. **Private wells under construction.** A private drinking water well located on property that qualifies as the claimant's principal residence under part 7190.1110 is eligible for replacement or decontamination expenses that exceed the anticipated contract costs for construction of the well if at the time of discovery of contamination:

- A. the well is under construction on the property; or
- B. a binding contract for construction of the well has been entered into.

Statutory Authority: *MS s 115B.34*

History: *16 SR 2162*

7190.2000 HARDSHIP.

For purposes of determining eligibility for compensation for losses incurred in the sale of a principal residence under Minnesota Statutes, section 115B.34, subdivision 2, paragraph (a), clause (2), or losses incurred as a result of the inability of an owner to sell a principal residence under Minnesota Statutes, section 115B.34, subdivision 2, paragraph (a), clause (3), the factors in item A or B constitute a hardship to the owner.

A. An urgent need to sell the residence based on a special circumstance, including the following:

- (1) loss of household income;
- (2) owner's job relocation;
- (3) catastrophic medical expenses for which the owner is responsible; or
- (4) owner's physical disability.

B. An urgent need to sell a property due to a commitment to purchase a new residence, if the claimant:

MINNESOTA RULES 2003

1639

HARMFUL SUBSTANCE CLAIMS, COMPENSATION 7190.2010

(1) committed in writing to the purchase of the new residence and publicly listed or advertised to sell the property before the date of discovery of contamination; and

(2) the discovery of contamination occurred during the time the property was on the market.

Statutory Authority: *MS s 115B.34*

History: *16 SR 2162*

7190.2010 ELIGIBLE LOSSES ASSOCIATED WITH THE NEED TO MAINTAIN TWO RESIDENCES.

Subpart 1. **Eligible losses.** Losses eligible for reimbursement under Minnesota Statutes, section 115B.34, subdivision 2, paragraph (a), clause (3), include all essential utilities, property tax, necessary homeowner's insurance, mortgage interest expenses, and other property maintenance expenses. The claimant must have incurred the expenses on the principal residence after it had been on the market for a time equal to the average days on the market for comparable home sales outside the area of contamination. Average days on the market shall be determined from the multiple listing service data of the local real estate association for the listing year and locale.

Subp. 2. **Additional expenses.** Additional property maintenance expenses are compensable to the extent that they are determined by the Pollution Control Agency to be necessary to maintain the property value and marketability.

Statutory Authority: *MS s 115B.34*

History: *16 SR 2162; L 2002 c 379 art 2 s 23*