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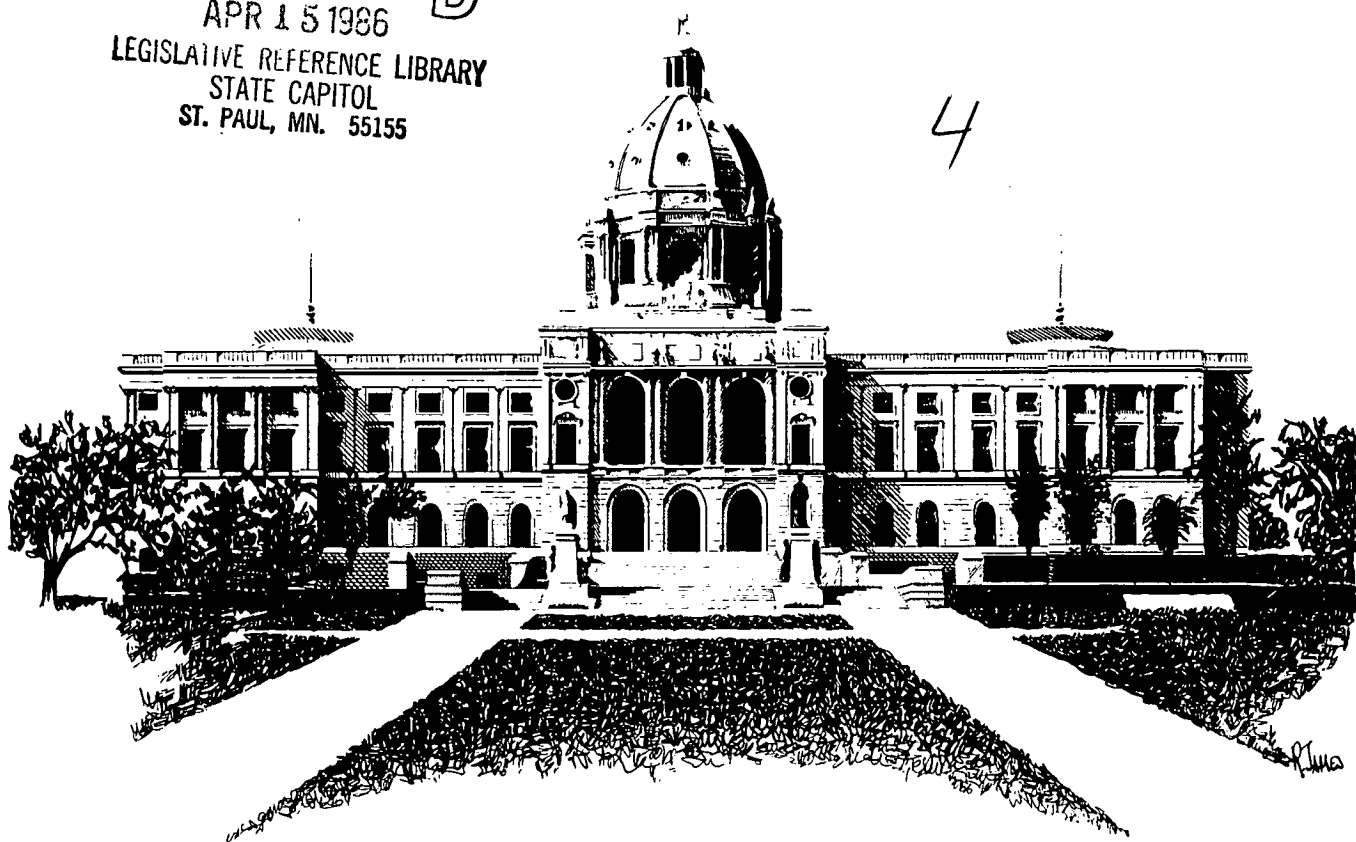
STATE OF MINNESOTA

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VOLUME 10, NUMBER 42

April 14, 1986

Pages 2097-2176



Printing Schedule for Agencies

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
SCHEDULE FOR VOLUME 10			
43	Monday 7 April	Monday 14 April	Monday 21 April
44	Monday 14 April	Monday 21 April	Monday 28 April
45	Monday 21 April	Monday 28 April	Monday 5 May
46	Monday 28 April	Monday 5 May	Monday 12 May

*Deadline extensions may be possible at the editor's discretion; however, none will be made beyond the second Wednesday (12 calendar days) preceding the issue date for rules, proposed rules and executive orders, or beyond the Wednesday (5 calendar days) preceding the issue date for official notices. Requests for deadline extensions should be made only in valid emergency situations.

**Notices of public hearings on proposed rules and notices of intent to adopt rules without a public hearing are published in the Proposed Rules section and must be submitted two weeks prior to the issue date.

Instructions for submission of documents may be obtained from the Office of the State Register, 504 Rice Street, St. Paul, Minnesota 55103, (612) 296-4273.

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The *State Register* is the official publication of the State of Minnesota, containing executive orders of the governor, proposed and adopted rules of state agencies, and official notices to the public. Judicial notice shall be taken of material published in the *State Register*.

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CONTENTS

MINNESOTA RULES AMENDMENTS AND ADDITIONS

Issues 40-42 inclusive 2100

PROPOSED RULES

Agriculture Department

Soil & Water Conservation Board

Proposed Rules Relating to Excessive Soil Loss Control 2101

Human Services Department

Proposed Rules Relating to Administration of Aid to Families with Dependent Children 2107

Labor & Industry Department

Occupational Safety and Health Division

Proposed Revision to the Occupational Safety and Health Standards 2157

ADOPTED RULES

Health Department

Adopted Rules Relating to Health Maintenance Organizations 2159

Housing Finance Agency

Adopted Rules Relating to Shared Housing Program . . . 2161

Racing Commission

Adopted Rules Governing Horse Racing 2161

OFFICIAL NOTICES

McLeod County

Filing Fees for County Law Library 2162

Pollution Control Agency

Solid and Hazardous Waste Division

Meetings of Midwest Interstate Low-Level Radioactive Waste Commission (MILLRWC) and Committees 2162

Pollution Control Agency

Solid and Hazardous Waste & Water Quality Division

Outside Opinion Sought Regarding Development of Rules for Underground Storage Tank (UST) Management and Possible Amendment of Rules for Above Ground Storage Tank Management 2163

State Retirement System

Board of Directors Regular Meeting 2163

Teachers Retirement Association

Meeting Notice 2163

STATE CONTRACTS

Administration Department

Procurement Division

Contracts & Requisitions Open for Bid 2164

Corrections Department

Red Wing Correctional Facility

Availability of Contracts for:

Dietetic Services 2165

Catholic Chaplain 2166

Medical Clinic Services 2166

Psychological Evaluation Services 2166

Volunteer Services Coordinator 2166

Certified Driver Education Instructor Services 2167

Corrections Department

Oak Park Heights Correctional Facility

Request for Proposals for Providing Food Services 2167

Human Services Department

Brainerd Regional Human Service Center

Notice of Request for Proposal for Medical Services and Behavior Modification Services 2167

Human Services Department

St. Peter Regional Treatment Center

Request for Proposal for Medical Services 2168

Jobs & Training Department

Request for Proposal for Graphics Arts Services 2168

SUPREME COURT CALENDAR

Cases Scheduled for May, 1986 2169

SUPREME COURT DECISIONS

Decisions Filed Friday, April 4, 1986 2171

TAX COURT

Orders filed April 1, 1986 2172

ERRATA

Revenue Department

Property Equalization Division

Correction to Proposed Rules Relating to Railroad Valuation 2173

NOTICE

How to Follow State Agency Rulemaking Action in the State Register

State agencies must publish notice of their rulemaking action in the State Register. If an agency seeks outside opinion before promulgating new rules or rule amendments, it must publish a NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION also.

The PROPOSED RULES section contains:

- Calendar of public hearings on proposed rules.
• Proposed new rules (including notice of hearing and/or notice of intent to adopt rules without a hearing).
• Proposed amendments to rules already in existence in the Minnesota Rules.
• Proposed emergency rules.
• Withdrawal of proposed rules (option; not required).

The ADOPTED RULES section contains:

- Notice of adoption of new rules and rule amendments adopted without change from the previously published proposed rules. (Unchanged adopted rules are not republished in full in the State Register unless an agency requests this.)
• Adopted amendments to new rules or rule amendments (adopted changes from the previously published proposed rules).
• Notice of adoption of emergency rules.
• Adopted amendments to emergency rules (changes made since the proposed version was published).
• Extensions of emergency rules beyond their original effective date.

The OFFICIAL NOTICES section includes (but is not limited to):

- Notice of intent to solicit outside opinion before promulgating rules.
• Additional hearings on proposed rules not listed in original proposed rules calendar.

ALL ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES published in the State Register and filed with the Secretary of State before April 8, 1985 are published in the Minnesota Rules 1985. ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES filed after April 8, 1985 will be included in a supplement scheduled for publication in Spring, 1986. Proposed and adopted EMERGENCY (formerly called TEMPORARY) RULES appear in the State Register but are generally not published in the Minnesota Rules due to the short-term nature of their legal effectiveness. Those that are long-term may be published.

The State Register publishes partial and cumulative listings of rule in the MINNESOTA RULES AMENDMENTS AND ADDITIONS list on the following schedule:

Table with 2 columns: Issue/Range and Cumulative/Inclusive status. Includes: Issues 1-13, inclusive; Issues 14-25, inclusive; Issue 26, cumulative for 1-26; Issues 27-38, inclusive; Issue 39, cumulative for 1-39; Issues 40-51, inclusive; Issue 52, cumulative for 1-52.

The listings are arranged in the same order as the table of contents of the Minnesota Rules 1985.

MINNESOTA RULES AMENDMENTS AND ADDITIONS

NOTE: This listing includes all proposed and adopted rules printed in this issue except emergency rules and errata for this issue. Please see those sections for the appropriate rule numbers.

DEPARTMENT OF ECONOMIC SECURITY (Now JOBS AND TRAINING)

3300.0100; .0300; .0400; .0601 (proposed) 2056

DEPARTMENT OF EDUCATION

3530.2610-.2644 (adopted) 2075

HOUSING FINANCE AGENCY

4900.1360-4900.1362 (proposed) 2053

4900.0381 [Emer] (proposed) 2076

4900.1804-.1808 (adopted) 2161

DEPARTMENT OF HEALTH

4656.0010-.0100 (proposed temporary) 2011

4685.0100; .2800; .1910-1970; .2150 (adopted) 2159

DEPARTMENT OF LABOR AND INDUSTRY

5205.0010 (proposed revision) 2157

MN BOARD OF PHARMACY

6800.1500; .1600; .2250; .3100; .3110; .3120; .3650; .9900 (adopted) 2007

6800.1500, s.8 (repealer) 2007

MN POLLUTION CONTROL AGENCY

7002.0210-.0310 (adopted) 2010

Solid and Hazardous Waste Division

7035.1100-.1115 (adopted) 2009

RACING COMMISSION

7869.0100; 7873.0127; .0130; .0140; 7875.0200; 7876.0110; 7877.0110; .0120; .0130; .0140; .0145; .0170; .0175; .0180; 7878.0130; .0140; .0150; .0160; 7883.0100; .0140; .0150; 7891.0100; 7892.0150; 7895.0125; .0250; .0275; .0300; .0350 (adopted) 2161

DEPARTMENT OF REVENUE

8105.0100; .0200; .0300; .0400; .0500; .0600; .0700; .9900 (proposed repealer) 2058
8106.0100-.9900 (proposed) 2058

DEPARTMENT OF AGRICULTURE

8400.4000-.4080 (proposed) 2101

**DEPARTMENT OF PUBLIC WELFARE
(Now HUMAN SERVICES)**

9500.2000-.2880 (proposed)	2107	.0210; .0220; .0230; .0240; .0250; .0260; .0270; .0280; .0290; .0300; .0310; .0320; .0330; .0340; .0350; .0360; .0361; .0370 (proposed repealer)	2107
9500.0010; .0020; .0030; .0040; .0050; .0060; .0070; .0080; .0090; .0100; .0110; .0120; .0130; .0140; .0150; .0160; .0170; .0180; .0190; .0200;		9549.0050-.0059 (proposed temporary)	2016
		9550.6200-.6240 (adopted)	2005

PROPOSED RULES

Pursuant to Minn. Stat. of 1982, §§ 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless 25 or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules; and
4. that the rule may be modified if the modifications are supported by the data and views submitted.

If, during the 30-day comment period, 25 or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

Pursuant to Minn. Stat. §§ 14.29 and 14.30, agencies may propose emergency rules under certain circumstances. Proposed emergency rules are published in the *State Register* and, for at least 25 days thereafter, interested persons may submit data and views in writing to the proposing agency.

**Department of Agriculture
Soil and Water Conservation Board**

Proposed Rules Relating to Excessive Soil Loss Control

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Minnesota Department of Agriculture proposes to adopt the above-entitled rules without a public hearing. The Commissioner of Agriculture and the Soil and Water Conservation Board have determined that the proposed rules will be noncontroversial in nature and have elected to follow the procedures set forth in Minnesota Statutes, Sections 14.22-14.28.

Persons interested in these rules are encouraged to submit comment in support of or in opposition to the proposed rules, and shall have 30 days to do so. Each comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed. The proposed rules may be modified if the modifications are supported by the data and views submitted to the department and do not result in a substantial change in the proposed language.

Unless 25 or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. Persons requesting a public hearing should state their name and address, and are encouraged to identify the portion of the proposed rules addressed, the reason for the request, and any proposed change. In the event a public hearing is required, the department will proceed according to the provisions of Minnesota Statutes, Sections 14.11-14.20.

Persons who wish to submit comments or a written request for a public hearing should submit them to: Gerald Heil, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, (612) 296-1486.

Authority to adopt these rules is contained in Minnesota Statutes, 1985 Supplement, Section 40.21. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available upon request from Mr. Heil.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

PROPOSED RULES

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as adopted, should submit a written statement of such request to Mr. Heil.

The proposed rules will not impact small business as defined in Minnesota Statutes, Section 14.115, because these rules relate to local administration of a state program.

A copy of the proposed rules is attached to this Notice.

Copies of this Notice and the proposed rule are available and may be obtained by contacting Mr. Heil.

March 24, 1986

Ronald N. Nargang, director
Soil and Water Conservation Board

Rules as proposed (all new material)

8400.4000 GENERAL PROVISIONS.

Subpart 1. **Purpose.** The purpose of parts 8400.4000 to 8400.4080 is to reduce the amount of soil erosion on Minnesota land. The benefits of the local adoption of parts 8400.4000 to 8400.4080 include decreasing the amount of off-site damages from sediment, retaining the productivity of the soil, and improving water quality.

Subp. 2. **Policy.** Parts 8400.4000 to 8400.4080 are adopted in accordance with Minnesota Statutes, sections 40.19 to 40.28 and apply to all activities which cause excessive soil loss.

Subp. 3. **Scope.** Parts 8400.4000 to 8400.4080 pertain to all activities that will disturb the land surface and cause excessive soil loss, and are consistent with the minimum degree of local protection against soil erosion. Local governments may enact soil loss limits which are more restrictive than parts 8400.4000 to 8400.4080.

Subp. 4. **Voluntary adoption.** A local government of a county, home rule charter or statutory city, or town with the authority to adopt and administer an ordinance may choose to adopt and administer soil loss limits. Parts 8400.4000 to 8400.4080 are only applicable if the local government adopts a soil loss limits ordinance under Minnesota Statutes, sections 40.19 to 40.28.

8400.4002 DEFINITIONS.

Subpart 1. **Scope.** For the purpose of parts 8400.4000 to 8400.4080 the terms defined in this part have the meanings given.

Subp. 2. **Agricultural use.** "Agricultural use" means the use of land for the production of livestock, dairy animals, dairy products, poultry or poultry products, fur-bearing animals, horticultural or nursery stock, including sod, fruit, vegetables, forage and cash grains, forestry, or bees and apiary products. Wetlands, pasture, and woodlands accompanying land in agricultural use are also defined as an agricultural use.

Subp. 3. **Board.** "Board" means the state Soil and Water Conservation Board created under Minnesota Statutes, chapter 40.

Subp. 4. **Conservation plan and time schedule.** "Conservation plan" means a document listing a set of practices that, when implemented, will decrease soil erosion to the soil loss limits on a particular parcel of land. The "time schedule" will set times to implement, make satisfactory progress on, and complete the conservation plan.

Subp. 5. **Conservation practice.** "Conservation practice" means a practice containing a definition, purpose, conditions under which the practice is applied including design requirements, and specifications containing a statement of details required for installing a conservation practice, including necessary kinds, quality, and quantity of work and materials. A conservation practice may be a permanent or temporary, vegetative or structural measure that, when applied to the land, will contribute to the control of wind and water erosion. Permanent practices are those that have an effective life of ten years or more and include grassed waterways, terraces, field windbreaks, water control structures, grade stabilization structures, sediment retention structures, strip-cropping, water and sediment control basins, and other permanent practices approved by the board. Temporary practices include conservation tillage, contour farming, grasses and legumes in rotation, emergency tillage, and any other cultural practices approved by the board. The field office technical guide or other recognized technical procedures must be used to design, install, and certify practices.

Subp. 6. **Development activity.** "Development activity" means a physical disturbance of the land associated with activities that may result in sedimentation of adjacent lands or waters. These activities include, but are not limited to, clearing, grading, excavating, transporting, draining, and filling lands. Federal, state, county, and municipal road construction designed and installed according to Department of Transportation standard specifications for construction are not development activities.

Subp. 7. **District.** "District" means a soil and water conservation district organized under Minnesota Statutes, chapter 40.

Subp. 8. **Erosion.** "Erosion" means any process that wears away the surface of the land by the action of water, wind, ice, or gravity. "Erosion" can be accelerated by the activities of man or nature.

Subp. 9. **Excessive soil loss.** "Excessive soil loss" means soil loss that is greater than the soil loss limit. "Excessive soil loss" may be evidenced by sedimentation on adjoining land or body of water, watercourse, or wetland.

Subp. 10. **Field office technical guide.** "Field office technical guide" means the guide developed by the United States Department of Agriculture, Soil Conservation Service and adopted by the soil and water conservation districts containing technical information including methods and procedures by which the various types of erosion can be measured, and conservation practice standards and specifications required in the application of soil and water conservation practices.

Subp. 11. **Land occupier.** "Land occupier" means a person, firm, corporation, municipality, or other legal entity that owns or possesses land as owner, lessee, renter, tenant, or otherwise. The terms include both the owner and the occupier of the land if they are not the same.

Subp. 12. **Local government.** "Local government" means the elected governing body of a county, home rule charter or statutory city, or town, or their designated agents. Agents may include a soil and water conservation district, water management organization, joint power board, watershed district, or other governmental entity responsible for resource management within the affected jurisdiction.

Subp. 13. **Sediment.** "Sediment" means solid mineral or organic material that is in suspension or motion, being transported or has been moved from its original site by air, water, gravity, or ice.

Subp. 14. **Sedimentation.** "Sedimentation" means the process or action of depositing sediment that, upon inspection, is determined to have been caused by erosion.

Subp. 15. **Soil.** "Soil" means the unconsolidated mineral and organic material on the immediate surface of the earth that serves as a natural medium for the growth of land plants.

Subp. 16. **Soil loss limits.** "Soil loss limits" means the maximum amount of soil loss from water or wind erosion, expressed in tons per acre per year, that is allowed by local regulations on a particular soil. The local soil loss limits ordinance must use the soil loss tolerance for each soil series described in the Field Office Technical Guide or the United States Department of Agriculture Soil Conservation Service Soil Survey for a particular county, whichever is more current.

Subp. 17. **Soil loss tolerance.** "Soil loss tolerance" means the maximum rate of annual soil erosion that will permit crop productivity to be sustained economically and indefinitely. In Minnesota, "soil loss tolerance" ranges from one to five tons per acre per year depending on the particular soil characteristics. "Soil loss tolerance" values for Minnesota soil series are provided in the Field Office Technical Guide or the United States Department of Agriculture Soil Conservation Service Soil Survey for a particular county.

8400.4005 LOCAL DUTIES.

In accordance with Minnesota Statutes, sections 40.19 to 40.28, a local government may adopt soil loss limits which meet the minimum standards and criteria for soil loss, and once adopted shall administer and enforce the soil loss limits ordinance.

8400.4010 SOIL AND WATER CONSERVATION DISTRICT DUTIES.

In accordance with Minnesota Statutes, sections 40.19 to 40.28, districts shall:

- A. provide assistance to local governments in determining whether excessive soil loss is occurring;
- B. provide assistance to the land occupiers in developing a conservation plan and time schedule with suggested conservation practices and a time schedule for application of the best practicable conservation practices; and
- C. make available to land occupiers state cost-share funds as provided by parts 8400.4045 and 8400.4060.

8400.4015 COMMISSIONER'S DUTIES.

In accordance with Minnesota Statutes, sections 40.19 to 40.28, the commissioner of agriculture shall:

- A. establish statewide standards reviewed every five years, for the management of land to prevent excessive soil loss from occurring;
- B. upon request, assist the local government in the drafting of a soil loss limits ordinance which meets the provisions of

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PROPOSED RULES

Minnesota Statutes, sections 40.19 to 40.28 and parts 8400.4000 to 8400.4080 which assistance includes, but is not limited to, creation of specific guidelines to be used locally in the formulation of reasonable regulations and other conservation practices based on sound technical data and consistent with statewide standards and community land use needs;

C. where sufficient information is not available, cooperate to the fullest extent with appropriate federal, state, and local governments in securing adequate technical information;

D. periodically review and upgrade soil loss limits criteria based on new technical methodologies;

E. disseminate to the local government, whenever available, technical information including information of federal, state, and local programs, educational materials and other material useful in carrying out a soil loss limits program; and

F. coordinate federal, state, and local soil loss limits activities in the state.

8400.4025 MINIMUM STANDARDS FOR LOCAL SOIL LOSS LIMITS ORDINANCES.

Subpart 1. **Permitted soil loss.** Local government soil loss limits must use the soil loss tolerance for each soil series as the maximum amount of soil loss permitted. The final approval of the soil loss tolerance information used rests with the district.

Subp. 2. **Sedimentation control plan.** Local government soil loss limits must require that a sedimentation control plan and time schedule must be developed by a land occupier and submitted to the local government before any development activity begins.

Subp. 3. **Model ordinances.** The model ordinances incorporated by reference in part 8400.4080 are the minimum standards for the adoption or amendment of soil loss limits under Minnesota Statutes, sections 40.19 to 40.28. A local government may adopt soil loss limits which are stricter than the model ordinances.

8400.4030 PROHIBITED ACTIVITIES.

Subpart 1. **General prohibition.** A person may not cause, conduct, contract for, or authorize an activity which causes excessive soil loss.

Subp. 2. **Agricultural activity.** A land occupier shall:

A. if engaged in an agricultural use, prevent excessive soil loss and ensure that proper management and conservation practices are being applied to the land;

B. if using wooded or open land for pasture, ensure that proper management is used to prevent excessive soil loss due to overgrazing or cattle paths; and

C. if using wooded land for timber harvest, ensure that proper management is used to prevent excessive soil loss.

Subp. 3. **Agricultural land occupier.** A land occupier of agricultural land is not violating subparts 1 and 2 if the district report, as developed through part 8400.4040, subpart 3, shows that the existing farming practices and methods being applied are effectively controlling soil loss.

Subp. 4. **Development activity.** A person engaged in a development activity that will disturb over one acre of land must submit a sedimentation control plan and time schedule that will prevent excessive soil loss to the local government for its approval.

Subp. 5. **Road construction.** A land occupier engaged in federal, state, county, or municipal road construction is not violating subpart 1 if the road construction is designed and installed according to Department of Transportation standard specifications for construction.

8400.4037 PROCEDURE FOR DEVELOPMENT ACTIVITY.

Subpart 1. **Submission of sedimentation control plan and time schedule.** A land occupier shall submit a sedimentation control plan and time schedule to the local government for approval prior to beginning any development activity which will disturb over one acre of land.

Subp. 2. **Specification of methods.** A sedimentation control plan and time schedule must specify how the movement of soil and damage to other lands and regions will be minimized during the construction process. These methods include, but are not limited to, the use of temporary seeding, fiber mats, plastic, straw mulch, sediment basins, or other measures adequate to prevent erosion and sediment damage.

Subp. 3. **Conformance with local ordinances.** Any method used in controlling sedimentation developed for the sedimentation control plan must not violate any existing ordinance the local government is enforcing.

Subp. 4. **Review of plan and schedule.** The local government may appoint the zoning or planning director, county auditor, building inspector, engineer, or district to review the sedimentation control plan and time schedule. The local government must forward the sedimentation control plan and time schedule to the appointed reviewer within seven days of receiving the sedimentation control plan and time schedule from the land occupier.

Subp. 5. **Time for review.** The appointed reviewer shall review the sedimentation control plan and time schedule within 21 days

of receiving the plan from the local government. The local government shall notify the land occupier of its decision after receipt of comments from the reviewer and no more than 28 days after receiving the sedimentation control plan and time schedule from the land occupier.

Subp. 6. **Issuance of permit.** If the reviewer determines that the sedimentation control plan and time schedule will prevent sedimentation, the local government shall issue a permit that authorizes the development activity contingent upon the implementation of the sedimentation control plan and time schedule.

Subp. 7. **Denial of permit.** If the reviewer determines that the sedimentation control plan and time schedule does not control sedimentation, the local government shall not issue a permit for the development activity. The sedimentation control plan and time schedule must be resubmitted for approval before the development activity begins.

Subp. 8. **Penalty.** A land occupier engaged in a development activity who does not obtain an approved sedimentation control plan and time schedule or does not commence or complete the plan or make satisfactory progress to complete the plan is subject to a civil penalty and the local government shall file the complaint with the county attorney.

8400.4040 PROCEDURE FOR AGRICULTURAL ACTIVITIES.

Subpart 1. **Complaint.** Adversely affected land occupiers, elected or duly appointed officials of the local government, or district board members may submit a signed written complaint to the local government if conditions exist that indicate there is excessive soil loss from a tract of land. The local government shall submit the complaint to the district for soil loss determination.

The signed written complaint must include:

- A. the name and address of the alleged offending land occupier;
- B. the location of the tract of land with the alleged excessive soil loss;
- C. other land or water that is allegedly being affected by the excessive soil loss; and
- D. a description of the nature of the alleged excessive soil loss and resulting sedimentation.

Subp. 2. **Determination.** Upon request by the local government, the district shall determine the average annual soil loss in tons per acre per year of the tract of land cited in the complaint. The district may enter public or private land to make an inspection for the determination of soil loss or to complete the report. The district shall notify the land occupier of the time of the inspections and give the land occupier an opportunity to be present when the inspection is made.

The notice must:

- A. be given ten days prior to the date of the inspection;
- B. be delivered either by personal service or certified mail; and
- C. if the owner of the property and the occupier of the residence differ, be delivered to both the owner and the occupier.

Subp. 3. **Report.** The district shall submit a report to the local government that states the average soil loss in tons per acre per year for each tract of land and if that soil loss is excessive under the applicable soil loss limits.

If the soil loss is excessive, the report must include identification of existing farming practices and a conservation plan and time schedule that will prevent excessive soil loss or reduce the soil loss on that tract of land.

If the report shows that soil loss from the tract of land is equal to or below the soil loss tolerance for that soil series, the local government shall dismiss the complaint and notify the land occupier.

Subp. 4. **Notification of excessive soil loss.** If the local government finds that excessive soil loss is occurring, it must give written notification to the land occupier. The notification must:

- A. describe the land and state the extent to which soil loss exceeds the soil loss limits;
- B. be delivered within ten days of the local government's decision;
- C. be delivered either by personal service or by certified mail; and
- D. state a time, not more than 90 days after the date of delivery of the order, by which mediation must be commenced.

Subp. 5. **Mediation.** If the district report shows that soil loss from a tract of land is excessive and conservation practices are

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PROPOSED RULES

available to reduce the soil loss, the local government may request the offending land occupier to participate in mediation with the local government. The local government may appoint the planning and zoning director, a planning commissioner, or other official to act as mediator. The local government also may contract with a private mediation center to provide mediation services.

The land occupier and local government must attempt to agree on a conservation plan and time schedule that will reduce soil loss to the acceptable limits set by a local soil loss limits ordinance.

A mediated settlement must be approved by the local government and land occupier, put in writing, and filed with the county.

8400.4045 COST-SHARE FUNDS FOR A MEDIATED SETTLEMENT.

When the local government approves the mediated written agreement, the land occupier has 90 days to apply for state cost-share funds that will provide 75 percent of the cost of the permanent conservation practices.

If the land occupier does not apply for cost-share funds within 90 days after the local government approves the mediated written agreement, only 50 percent cost-share funds may be provided. The land occupier must apply for 50 percent cost-share funds within 270 days after the mediated written agreement is approved.

The method of application and eligibility requirements for state cost-share funds must follow parts 8400.0100 to 8400.2900. If any other state or federal cost-share funds are used, the method of application and eligibility requirements must follow the current state or federal guidelines.

8400.4050 PENALTY.

If a land occupier does not comply with the provisions of the notification or mediated written agreement, the land occupier is subject to a civil penalty up to \$500.

The local government shall file the complaint with the county attorney.

8400.4055 HEARING PROCEDURE.

If the land occupier and local government do not reach a mediated written agreement or if the land occupier has refused mediation, the local government shall forward the complaint to the county attorney. The county attorney may petition the district court for a hearing.

At the hearing, the land occupier may present a conservation plan and time schedule as an alternative to the conservation plan and time schedule developed by the local government. The court shall review both plans and order the land occupier to implement the conservation plan and time schedule that will reduce soil loss to at least the soil loss limit. The court may choose to amend the conservation plan and time schedule developed by the local government or land occupier or develop a new conservation plan and time schedule.

The settlement must be put in writing and filed with the county.

8400.4060 COST-SHARE FUNDS FOR A COURT ORDER.

Subpart 1. **Alternative plans.** If the court orders the implementation of the land occupier's conservation plan and time schedule, an amended conservation plan and time schedule, or a new conservation plan and time schedule, the offending land occupier is eligible to apply for 75 percent cost-share funds for permanent conservation practices on that tract of land.

The land occupier must apply for those cost-share funds within 90 days after the court order. If the land occupier does not apply for the cost-share funds within 90 days, the cost-share funds are reduced to 50 percent. The court shall establish a time when the land occupier is no longer eligible for cost-share funds at 50 percent.

The method of application and eligibility requirements for state cost-share funds must follow parts 8400.0100 to 8400.2900. If any other state or federal cost-share funds are used, the method of application and eligibility requirements must follow the current state or federal guidelines.

Subp. 2. **Local government plan.** If the court orders the implementation of the conservation plan and time schedule developed by the local government, the offending land occupier is eligible for only 50 percent cost-share funds for permanent conservation practices on that tract of land. To qualify for those cost-share funds, the land occupier must apply for those cost-share funds within 90 days after the court order.

The method of application and eligibility requirements for state cost-share funds must follow parts 8400.0100 to 8400.2900. If any other state or federal cost-share funds are used, the method of application and eligibility requirements must follow the current state and federal guidelines.

8400.4065 PENALTY.

A land occupier who does not comply with a court-ordered agreement is subject to a civil penalty up to \$500.

8400.4070 ESTABLISHMENT OF COST-SHARE FUNDS.

Except for a development activity, a land occupier may apply for cost-share funds in the amounts set in parts 8400.4045 and 8400.4060. If cost-share funds are not currently available, the land occupier and the district shall enter into a priority cost-share assistance contract for future cost-share funds. The priority cost-share assistance contract must state the percentage of cost-share funds as set in parts 8400.4045 and 8400.4060. With the approval of the priority cost-share assistance contract, the land occupier is considered to be in compliance with the mediated or court ordered agreement.

The priority cost-share assistance contract, prepared by the commissioner of agriculture, is incorporated by reference. This document is subject to frequent change and is available at the state law library.

8400.4075 VARIANCES.

Subpart 1. **Request.** If a local government feels that a particular requirement of parts 8400.4000 to 8400.4070 prevents conservation practices or sedimentation control practices from being installed, a written request for a variance may be filed with the board. The request must contain:

- A. the name and address of the local government making the request and the signature of the appropriate personnel;
- B. the nature of the variance being sought, including an identification of the applicable rule from which the variance is sought, the time period for which it is sought, and the reason for seeking the variance;
- C. a statement of alternatives for dealing with installation of the affected practices if the variance is not granted; and
- D. a statement of the effects on applicable natural resources and the public if the variance is granted.

Subp. 2. **Decision.** Variance requests must be submitted to the board at least 30 days prior to the board meeting at which the variance is to be considered. Within 45 days after the meeting, the board must approve or deny the variance request and provide written notification of the decision to the applicant. A variance may not be granted if it is in conflict with any statute.

Subp. 3. **Modifications.** If a variance has been granted by the board, the local government holding the variance may file with the board, at any time, a written request for modification or amendment of the variance. The request for modification or amendment and the board's consideration of the request must comply with this part.

8400.4080 MODEL ORDINANCE.

The model ordinance, prepared by the commissioner of agriculture, in consultation with counties, districts, and other appropriate agencies, pursuant to Minnesota Statutes, section 40.21, subdivision 1, is incorporated by reference. That document may be subject to change and is available at the state law library.

Department of Human Services

Proposed Rules Relating to Administration of Aid to Families with Dependent Children

Notice of Hearing

NOTICE IS HEREBY GIVEN that a public hearing on the above-entitled matter will be held in Room 5, State Office Building, 432 Park Street, St. Paul, Minnesota, 55155 on May 14 and 15, 1986 commencing at 9:00 a.m. and continuing until all interested or affected persons have an opportunity to participate. The proposed rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rules, you are urged to participate in the rule hearing process.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to participate. Such persons may present their views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should be pertinent to the matter at hand. Written material not submitted at the time of the hearing which is to be included in the hearing record may be mailed to George Beck, Administrative Law Judge, Office of Administrative Hearings, 400 Summit Bank Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415; telephone 612/341-7601, either before the hearing or within five working days after the public hearing ends. The Administrative Law Judge, may at the hearing, order the record be kept open for a longer period not to exceed 20 calendar days.

The comments received during the comment period shall be available for review at the Office of Administrative Hearings. Following the close of the comment period the agency and all interested persons have three business days to respond in writing to any

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PROPOSED RULES

new information submitted during the comment period. During the three-day period, the agency may indicate in writing whether there are amendments suggested by other persons which the agency is willing to adopt. No additional evidence may be submitted during the three-day period. The written responses shall be added to the rulemaking record.

Upon the close of the record the Administrative Law Judge will write a report as provided for in Minnesota Statutes, sections 14.15 and 14.50. The rule hearing is governed by Minnesota Statutes, section 14.01 to 14.56 and by Minnesota Rules, parts 1400.0200 to 1400.1200. Questions about procedure may be directed to the Administrative Law Judge.

The Aid to Families with Dependent Children (AFDC) Program provides financial assistance and services to needy dependent children and the caretakers with whom they are living to help maintain and strengthen family life and to help such caretakers attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection. The AFDC Program is administered by local agencies under the supervision of the Commissioner of Human Services. There are approximately 54,000 Minnesota families, including 157,000 persons currently receiving benefits under the AFDC program.

Proposed Minnesota Rules, parts 9500.2000 to 9500.2880 include sections on scope and administration; definitions; the application process; basic eligibility criteria; eligibility based upon the death, incapacity, continued absence, and unemployment of a parent; property limitations; evaluation of income; documentation and verification requirements; assistance payment standards; AFDC payment eligibility tests; budget calculations; treatment of lump sum payments; earning disregards; allocation of unmet needs; correction of overpayments and underpayments; local agency responsibilities to clients; the appeal process; support requirements of parents of minor caretakers; wrongfully obtained assistance; payments for funerals, housing and special needs; the relationships between the AFDC Program and other public assistance programs; settlement of county disputes; and the AFDC-Emergency Assistance (AFDC-EA) Program.

Proposed part 9500.2820, governing the AFDC-EA Program, includes a statement of applicability, definitions, the application process, eligibility criteria, the types of emergencies covered under the program, limitations of the program, conditions under which emergency assistance will be issued, and appeals provisions specific to the AFDC-EA Program.

Amendments may be proposed at the hearing based on changes to federal and state law enacted prior to the hearing.

The agency's authority to adopt the proposed rules is contained in Minnesota Statutes, section 256.01, subdivision 4 and 256.871, subdivision 7.

The cost to local public bodies of implementing the proposed rule changes is estimated to be less than \$100,000 per year for the first two years following passage of the rule.

A fiscal note explaining the costs to local agencies of complying with the rule has been prepared according to the requirements of Minnesota Statutes, section 3.982. A free copy of the fiscal note may be obtained by contacting Barry Stern, Rules Unit, Department of Human Services, 6th Floor, Space Center, 444 Lafayette Road, St. Paul, Minnesota 55101, telephone (612) 296-1545.

Copies of the proposed rules are now available and at least one free copy may be obtained by writing to Barry Stern.

Additional copies will be available at the hearing. If you have any questions on the content of the rule, contact Paul Timm-Brock, Assistance Payments Policy and Operations Division, Department of Human Services, 2nd Floor, Space Center, 444 Lafayette Road, St. Paul, Minnesota, 55101, telephone (612) 296-0978.

NOTICE: Any person may request notification of the date on which the Administration Law Judge's report will be available, after which date the agency may not take any final action on the rules for a period of five working days. If you desire to be notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Administrative Law Judge. Any person may request notification of the date on which the rules were adopted and filed with the secretary of state. The notice must be mailed on the same day the rules are filed. If you want to be so notified you may so indicate at the hearing or send a request in writing to the agency at any time prior to the filing of the rules with the secretary of state.

NOTICE IS HEREBY GIVEN that a Statement of Need and Reasonableness is now available for review at the agency and at the Office of Administrative Hearings. The Statement of Need and Reasonableness includes a summary of all the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be reviewed at the agency or the Office of Administrative Hearings and copies may be obtained from the Office of Administrative Hearings at the cost of reproduction.

Minnesota Statutes, chapter 10A, requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minnesota Statutes, section 10A.01, subdivision 11, as any individual:

(a) engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than \$250, not including travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communication or urging others to communicate with public officials; or

(b) who spends more than \$250, not including traveling expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 625 North Robert Street, St. Paul, Minnesota 55105, telephone (612) 296-5148.

March 25, 1986

Leonard W. Levine, Commissioner
Department of Human Services

Rules as Proposed (all new material)

9500.2000 SCOPE.

Parts 9500.2000 to 9500.2880 govern the administration of the aid to families with dependent children program in Minnesota. The aid to families with dependent children program provides financial assistance to qualifying families, according to assistance payment standards authorized in Minnesota law, to help them provide their children with a reasonable subsistence compatible with decency and health. Parts 9500.2000 to 9500.2880 must be read in conjunction with Minnesota Statutes, chapter 256; title IV of the Social Security Act; and Code of Federal Regulations, title 45.

9500.2020 ADMINISTRATION.

Subpart 1. **Compliance with state and federal law.** The commissioner shall cooperate with the federal government in order to qualify for federal financial participation in the aid to families with dependent children program. Changes to the aid to families with dependent children program required by state or federal law or by court order supersede parts 9500.2000 to 9500.2880. The changes are effective on the date specified in bulletins or manuals issued by the commissioner to a local agency.

Subp. 2. **Administrative relationships.** The aid to families with dependent children program is administered by local agencies under the supervision of the commissioner.

The commissioner shall supervise the aid to families with dependent children program on a statewide basis so that local agencies comply with the standards of the program.

A local agency shall provide fair and equal treatment to an applicant or recipient according to statewide policies. The commissioner is authorized to direct a local agency to correct a policy or practice that conflicts with statewide program requirements. A local agency shall comply with procedures and forms prescribed by the commissioner of human services in bulletins and manuals to assure conformance with parts 9500.2000 to 9500.2880.

9500.2060 DEFINITIONS.

Subpart 1. **Applicability.** The terms used in parts 9500.2000 to 9500.2880 have the meanings given them in subparts 2 to 154 unless otherwise indicated.

Subp. 2. **Absent parent.** "Absent parent" means the parent of a dependent child who does not live in the child's home.

Subp. 3. **Actual availability.** "Actual availability," when used in reference to income or property, is that which is in-hand or which can be readily obtained for current use.

Subp. 4. **Affidavit.** "Affidavit" means a written declaration made under oath before a notary public or other authorized officer.

Subp. 5. **Agency error.** "Agency error" means an error that results in an overpayment which is not caused by an applicant's or recipient's failure to provide adequate, correct, or timely information about income, property, or other circumstances.

Subp. 6. **Aid to families with dependent children or AFDC.** "Aid to families with dependent children" or "AFDC" means the program authorized under title IV-A to provide financial assistance and social services to needy families with dependent children.

Subp. 7. **AFDC family allowance.** "AFDC family allowance" means the standardized Minnesota need and assistance payment schedule for assistance units of various compositions. An assistance unit's net income is subtracted from the AFDC family allowance to determine the amount of that assistance unit's monthly assistance payment.

Subp. 8. **AFDC housing allowance.** "AFDC housing allowance" means those payments authorized under Minnesota Statutes, section 256.879 and described in part 9500.2800, subpart 2.

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PROPOSED RULES

Subp. 9. **AFDC unit.** "AFDC unit" means the organizational entity within a local agency which is responsible for determining program eligibility and the amount of assistance payment.

Subp. 10. **Appeal.** "Appeal" means a written statement from an applicant or recipient which requests a hearing or expresses dissatisfaction with a local agency decision that can be challenged under Minnesota Statutes, section 256.045 and part 9500.2740, subpart 8.

Subp. 11. **Applicant.** "Applicant" means a person for whom an application has been submitted to a local agency, and whose application has not been approved, denied, nor voluntarily withdrawn.

Subp. 12. **Application.** "Application" means the action by which a person shows in writing a desire to receive assistance by submitting a signed and dated form prescribed by the commissioner to the local agency.

Subp. 13. **Assignment of support.** "Assignment of support" means the transfer of a person's right to support to a local agency.

Subp. 14. **Assistance.** "Assistance" means a financial benefit received from the aid to families with dependent children program.

Subp. 15. **Assistance unit.** "Assistance unit" means a group of persons who are applying for or receiving assistance and whose needs are included in the assistance payment issued under Minnesota Statutes, sections 256.72 to 256.87.

Subp. 16. **Authorized representative.** "Authorized representative" means a person who is authorized in writing by an applicant or recipient to act on that applicant's or recipient's behalf in matters involving AFDC or emergency assistance, including submitting applications, making appeals, and providing or requesting information. An authorized representative may exercise the same rights and responsibilities on behalf of the person being represented as an applicant or recipient.

Subp. 17. **Basic needs.** "Basic needs" means food, clothing, shelter, utilities, personal hygiene items, and other subsistence items.

Subp. 18. **Blood related.** "Blood related" means a person who is related by birth rather than by marriage or adoption.

Subp. 19. **Budget month.** "Budget month" means the calendar month from which a local agency uses the income or circumstances of an assistance unit to determine the amount of the assistance payment for the payment month.

Subp. 20. **Care.** "Care" means regular and ongoing supervision and provision of services such as feeding, dressing, and cleaning.

Subp. 21. **Caretaker.** "Caretaker" means a person listed in part 9500.2440, subpart 7 who lives with and provides care to a dependent child.

Subp. 22. **Case record.** "Case record" means the eligibility file of a particular assistance unit.

Subp. 23. **Children standard.** "Children standard" means the portion of the AFDC family allowance so named in part 9500.2440, subpart 5, item A.

Subp. 24. **Child support enforcement unit.** "Child support enforcement unit" means the organizational entity within a county which is responsible for establishing paternity and collecting support according to Title IV-D of the Social Security Act.

Subp. 25. **Child support pass through.** "Child support pass through" means the \$50 payment authorized under Code of Federal Regulations, title 45, section 302.51(b)(1).

Subp. 26. **Child welfare funds.** "Child welfare funds" means funds issued under Title IV-B.

Subp. 27. **Civil judgment.** "Civil judgment" means a money judgment rendered by a court of competent jurisdiction.

Subp. 28. **Client error.** "Client error" means an error that results in an overpayment which is due to an applicant's or recipient's failure to provide adequate, correct, or timely information concerning income, property, or other circumstances or a recipient's choice to continue assistance while an appeal is pending.

Subp. 29. **Commissioner.** "Commissioner" means the commissioner of the department or the commissioner's designee.

Subp. 30. **Community Social Services Act.** "Community Social Services Act" means the system of planning for and providing community social services authorized under Minnesota Statutes, chapter 256E.

Subp. 31. **Community work experience program.** "Community work experience program" means the program authorized under Code of Federal Regulations, title 45, part 238.

Subp. 32. **Corrective payment.** "Corrective payment" means an assistance payment which is made to correct an underpayment.

Subp. 33. **Cost effective.** "Cost effective" refers to a result that is economical in terms of the goods and services received for the money spent, given feasible alternatives, or a result in which the cost is less than the value of the benefit received.

Subp. 34. **County board.** "County board" means the board of commissioners in each county established under Minnesota Statutes, chapter 393.

Subp. 35. **County of financial responsibility.** "County of financial responsibility" means the county liable for the county share of a recipient's assistance.

Subp. 36. **County of residence.** "County of residence" means the county providing AFDC administrative services to an applicant or recipient.

Subp. 37. **Date of application.** "Date of application" means the date on which a local agency receives a person's application.

Subp. 38. **Department.** "Department" means the Minnesota Department of Human Services.

Subp. 39. **Dependent child.** "Dependent child" means a child who is living in the home of a parent or other caretaker, who is deprived of the support or care of a parent as specified in parts 9500.2180 to 9500.2300, who is in financial need according to part 9500.2480, and who meets one of the conditions in items A to C:

A. is less than 18 years of age;

B. is 18 years of age and is a full-time student, as defined in subpart 58, item A, B, or F, at an accredited high school or its equivalent, and is expected to graduate or complete the school program before reaching age 19; or

C. is 18 years of age and is a full-time student, as defined in subpart 58, item C.

Subp. 40. **Deregistration from WIN.** "Deregistration from WIN" means the action taken through the WIN program by the Minnesota Department of Jobs and Training to remove a person from that program.

Subp. 41. **Disregard.** "Disregard" means a deduction from income as authorized under the Code of Federal Regulations, title 45, part 233.

Subp. 42. **Documentation.** "Documentation" means a written statement or record which substantiates or validates an assertion made by a person or an action taken by a local agency. "Primary documentation" means evidence that independently establishes a fact and that is provided by a public or private institution or organization having an official responsibility to establish that fact. "Alternative documentation" means evidence, including declarations, that supports the existence of a fact and that is provided by an individual or institution who has no official responsibility to establish that fact.

Subp. 43. **Early and periodic screening, diagnosis, and treatment or EPSDT.** "Early and periodic screening, diagnosis, and treatment" or "EPSDT" means the program authorized under Title XIX and which operates under parts 9505.1500 to 9505.1690.

Subp. 44. **Earned income.** "Earned income" means compensation from legal employment or legal self-employment, including salaries, wages, tips, gratuities, commissions, net profits from self-employment, earned income tax credits, incentive payments from work or training programs except those excluded in part 9500.2380, subpart 2, payments made by an employer for regularly accrued vacation or sick leave, and profit from other legal activity earned by an applicant's or recipient's effort or labor. Earned income does not include returns from capital investment or benefits that accrue as compensation or reward for service or for lack of employment.

Subp. 45. **Earned income tax credit.** "Earned income tax credit" means the payment which can be obtained by a qualified low income person from an employer or from the United States Internal Revenue Service under provisions of United States Code, title 26, section 32, as amended through December 31, 1985.

Subp. 46. **Emancipated minor.** "Emancipated minor" means a person under the age of 18 years who has been married, is on active duty in the uniformed services of the United States, or who has been emancipated by a court of competent jurisdiction.

Subp. 47. **Emergency.** "Emergency" means a situation that causes, or threatens to cause, a lack of a basic need item and the lack of resources to provide for that need.

Subp. 48. **Emergency assistance.** "Emergency assistance" means assistance and services funded under Title IV-A, authorized under Minnesota Statutes, section 256.871 and Code of Federal Regulations, title 45, section 233.120, and governed by part 9500.2820.

Subp. 49. **Encumbrance.** "Encumbrance" means a legal claim against real or personal property that is payable upon the sale of that property.

Subp. 50. **Equity value.** "Equity value" means the amount of equity in real or personal property owned by a person. Equity value is determined by subtracting any outstanding encumbrances from the fair market value.

Subp. 51. **Fair hearing or hearing.** "Fair hearing" or "hearing" means the department evidentiary hearing conducted by an

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PROPOSED RULES

appeals referee to determine whether an applicant or recipient is eligible for assistance or has received an incorrect amount of assistance.

Subp. 52. **Fair market value.** "Fair market value" means the price that an item of a particular make, model, size, material, or condition would sell for on the open market in the particular geographic area.

Subp. 53. **Federal and state AFDC participation.** "Federal and state AFDC participation" means the federal and state aid to a local agency for AFDC expenditures as specified under Code of Federal Regulations, title 45, part 237, and Minnesota Statutes, sections 256.82 and 256.871, subdivision 6.

Subp. 54. **Federal Insurance Contributions Act or FICA.** "Federal Insurance Contributions Act" or "FICA" means the federal law under United States Code, title 26, sections 3101 to 3126, that requires withholding or direct payment from earned income.

Subp. 55. **Financially responsible household members.** "Financially responsible household members" means spouses, parents of dependent children and minor caretakers, legal guardians of minor caretakers, and stepparents of dependent children to the extent authorized by federal and state law.

Subp. 56. **Filing unit.** "Filing unit" means a dependent child, any blood related and adoptive minor siblings, and any natural and adoptive parents who live in the same household.

Subp. 57. **First adult standard.** "First adult standard" means the portion of the AFDC family allowance so named and described in part 9500.2440, subpart 5, item B.

Subp. 58. **Full-time student.** "Full-time student" means a person who is:

A. enrolled in a primary, intermediate, or secondary school and attending classes at least 20 hours a week, of which up to half may be satisfied by employment which is approved through a work study program of the school in which the person is enrolled, or enrolled in and making satisfactory progress in a graded educational program approved by the school district when a physical, emotional, or mental impairment prevents classroom attendance;

B. enrolled in a trade or technical school or in GED preparatory training which provides certification equivalent to a secondary education and attending at least 20 hours a week, of which up to half may be satisfied by employment which is approved through a work study program of the school in which the person is enrolled;

C. enrolled in and attending classes at least 20 hours a week in an ungraded educational or vocational program approved by the school district because that person has a physical, emotional, or mental impairment which precludes graded coursework;

D. enrolled in and attending a postsecondary vocational school for at least 20 hours a week, including the time spent in shop practice;

E. registered for and attending classes which total at least 12 quarter or semester credits at an accredited college or university; or

F. enrolled in a graded or ungraded primary, intermediate, secondary, trade, technical, or vocational school, and attending that school when the school documents, at the request of the student, that the student meets the school's standard for full-time attendance.

Subp. 59. **GED.** "GED" means the general educational development certification issued by the Minnesota Board of Education as an equivalent to a secondary school diploma under part 3500.3100, subpart 4.

Subp. 60. **General assistance.** "General assistance" means the financial aid program authorized under Minnesota Statutes, chapter 256D.

Subp. 61. **General assistance medical care.** "General assistance medical care" means the program defined under Minnesota Statutes, section 256D.02, subdivision 4a.

Subp. 62. **Good cause.** "Good cause" means, generally, the circumstances, including those specified in parts 9500.2700, subparts 6, item C; 8, item B; 12; and 19; and 9500.2740, subpart 8, which are allowed to excuse a person's failure to comply with specified requirements or to meet specific conditions of eligibility.

Subp. 63. **Gross income.** "Gross income" means income, except for in-kind income, before any withholdings, deductions, disregards, or exclusions. When earnings are from self-employment, gross income is the difference between gross receipts and allowable expenses as provided in part 9500.2380, subpart 5.

Subp. 64. **Gross receipts.** "Gross receipts" means the money received by a business before the expenses of the business are deducted.

Subp. 65. **Guidance.** "Guidance" means regular and ongoing services provided to a dependent child, including supervision, training, discipline, and help with schoolwork.

Subp. 66. **Home.** "Home" means the primary place of residence used by a person as the base for day-to-day living and does not include locations used as maildrops.

Subp. 67. **Homestead.** "Homestead" means the real property used by a person as his or her home, as defined in Minnesota Statutes, section 256.73, subdivision 2, clause (1).

Subp. 68. **Household.** "Household" means a group of persons who live together.

Subp. 69. **Household report form.** "Household report form" means a form prescribed by the commissioner which an applicant or recipient uses to report information to a local agency about income and other circumstances according to part 9500.2700, subparts 5 to 7. The household report form is incorporated by reference. It is available at the Ford Law Library, 117 University Avenue, Saint Paul, Minnesota. It is subject to frequent change.

Subp. 70. **Incapacity.** "Incapacity" means the presence of a temporarily or permanently debilitating physical or mental condition which is expected to continue for a minimum of 30 days, and which reduces or eliminates the ability of a person to hold substantial gainful employment or which substantially reduces or eliminates a person's ability to care for his or her children with whom he or she lives. A person who has had disability status conferred by the Social Security Administration meets the definition of incapacity.

Subp. 71. **Income.** "Income" means cash or in-kind benefit, whether earned or unearned, received by or available to an applicant or recipient and not established as an asset under part 9500.2340.

Subp. 72. **In-kind income.** "In-kind income" means income, benefits, or payments which are provided in a form other than money or liquid asset, including the forms of goods, produce, services, privileges, or payments made on behalf of a person by a third-party.

Subp. 73. **Inquiry.** "Inquiry" means a communication to a local agency through mail, telephone, or in person, by which a parent, caretaker of minor children, or authorized representative requests information about AFDC or emergency assistance.

Subp. 74. **Job Training Partnership Act.** "Job Training Partnership Act" means the act authorized under Public Law Number 97-300 and its successor programs.

Subp. 75. **Joint legal custody.** "Joint legal custody" means a court ordered arrangement under which both parents have equal rights and responsibilities, including the right to participate in major decisions determining the child's upbringing, including education, health care, and religious training.

Subp. 76. **Joint physical custody.** "Joint physical custody" means an arrangement under which the routine daily care and control of a child is divided between both parents.

Subp. 77. **Legal availability.** "Legal availability" means a person's right under the law to secure, possess, dispose of, or control income or property.

Subp. 78. **Legal guardian.** "Legal guardian" means a person or persons designated by a court to assume, on a temporary or permanent basis, those rights and responsibilities for a child that would otherwise be assigned to a parent.

Subp. 79. **Licensed adoption agency.** "Licensed adoption agency" means a public or private agency which is licensed to place children for adoption under Minnesota Statutes, sections 259.21 to 259.49.

Subp. 80. **Licensed physician.** "Licensed physician" means a person who is licensed to provide medical services within the scope of his or her profession under Minnesota Statutes, chapter 147.

Subp. 81. **Licensed psychologist.** "Licensed psychologist" means a person who is licensed or certified to act in that capacity under Minnesota Statutes, sections 148.88 to 148.98.

Subp. 82. **Local agency.** "Local agency" means a county or multicounty agency that is authorized under Minnesota Statutes, sections 393.01, subdivision 7, and 393.07, subdivision 2, to administer AFDC.

Subp. 83. **Lockout.** "Lockout" means an action taken by an employer to refuse entry of an employee due to a labor dispute which is in progress at the worksite.

Subp. 84. **Low income home energy assistance program or LIHEAP.** "Low income home energy assistance program" or "LIHEAP" means the program authorized under United States Code, title 42, sections 8621 to 8629 and administered by the Minnesota Department of Jobs and Training.

Subp. 85. **Lump sum.** "Lump sum" means nonrecurring income which is not excluded in part 9500.2380, subpart 2.

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PROPOSED RULES

Subp. 86. **Maildrop.** "Maildrop" means an address or post office box which does not represent the actual home of the addressee and is used primarily for the receipt of mail or the establishment of AFDC eligibility.

Subp. 87. **Mandatory registrant.** "Mandatory registrant" means a person who is required to register for WIN, employment, or other employment activities as a condition of AFDC eligibility under part 9500.2700, subpart 16.

Subp. 88. **Medical assistance.** "Medical assistance" means the program established under title XIX and Minnesota Statutes, chapter 256B.

Subp. 89. **Minnesota supplemental aid.** "Minnesota supplemental aid" means the program established under Minnesota Statutes, sections 256D.35 to 256D.43.

Subp. 90. **Minor caretaker.** "Minor caretaker" means

- A. a person under the age of 18 years or who is age 18 and meets the definition of a dependent child under subpart 39; and
- B. who has applied as a caretaker on behalf of himself or herself and his or her dependent child.

Subp. 91. **Net income.** "Net income" means the countable income remaining after allowable deductions, disregards, and exclusions have been subtracted from gross income.

Subp. 92. **Nonrecurring income.** "Nonrecurring income" means a form of income which:

- A. is received only one time or is not of a continuous nature; or
- B. is received in a prospective payment month but is no longer received in the corresponding retrospective payment month.

Subp. 93. **Non-WIN county.** "Non-WIN county" means a county which does not operate a WIN program within its boundaries.

Subp. 94. **Occupational Safety and Health Administration.** "Occupational Safety and Health Administration" means that organizational part of the United States Department of Labor.

Subp. 95. **Overpayment.** "Overpayment" means an assistance payment, resulting from a calculation error, a client reporting error, a misapplication of existing program requirements by a local agency, or changes in payment eligibility that cannot be effected due to notification requirements in part 9500.2740, subpart 7, which is greater than the amount for which an assistance unit is eligible.

Subp. 96. **Parent.** "Parent" means a child's natural or adoptive parent who is legally obligated to support that child.

Subp. 97. **Payee.** "Payee" means a person to whom an assistance payment is made.

Subp. 98. **Payment eligibility test.** "Payment eligibility test" means an eligibility test applied to income after the gross income test is satisfied.

Subp. 99. **Payment month.** "Payment month" means the calendar month for which assistance is paid.

Subp. 100. **Personal property.** "Personal property" means an item of value which is not real property, including the value of a contract for deed held by a seller, assets held in trust on behalf of members of an assistance unit, cash surrender value of life insurance, value of a prepaid burial, savings account, value of stocks and bonds, and value of retirement accounts.

Subp. 101. **Principal wage earner.** "Principal wage earner" means the parent who has earned the greater amount of income in the 24 months preceding application for assistance, subject to the conditions in part 9500.2300.

Subp. 102. **Probable fraud.** "Probable fraud" means the level of evidence that, if proven as fact, will establish that assistance has been wrongfully obtained.

Subp. 103. **Program.** "Program" means the aid to families with dependent children program.

Subp. 104. **Prospective.** "Prospective" means anticipating conditions in a future period, normally the following month.

Subp. 105. **Prospective budgeting.** "Prospective budgeting" means a method of determining the amount of assistance in which the budget month and payment month are the same.

Subp. 106. **Protective payee.** "Protective payee" means a person other than the caretaker of an assistance unit who receives the monthly assistance payment on behalf of an assistance unit and is responsible to provide for the basic needs of the assistance unit to the extent of that payment.

Subp. 107. **Protective payment.** "Protective payment" means the assistance payment made to a protective payee.

Subp. 108. **Quality child care program.** "Quality child care program" means the program authorized under Code of Federal Regulations, title 7, part 226.

Subp. 109. **Quality control review process.** "Quality control review process" means the review process required under Code of Federal Regulations, title 45, sections 205.40 to 205.44.

Subp. 110. **Quarter of work.** "Quarter of work" means a calendar quarter in which a principal wage earner meets the qualifications of part 9500.2300, item G.

Subp. 111. **Real property.** "Real property" means the land itself and all buildings, structures, and improvements, or other fixtures on it, belonging or appertaining to the land, and all mines, minerals, fossils, and trees on or under it.

Subp. 112. **Reasonable compensation.** "Reasonable compensation" means the value received in exchange for property transferred to another owner which equals or exceeds the seller's equity in the property, reduced by costs incurred in the sale.

Subp. 113. **Recipient.** "Recipient" means a person who is currently receiving assistance. A person who returns an uncashed assistance check and withdraws from the program is not a recipient. A person who receives and cashes an assistance check and is subsequently determined to be ineligible for assistance for that period of time is a recipient, regardless of whether that assistance is repaid. The term "recipient" includes the caretaker relative and the dependent child whose needs are included in the assistance payment. A person in an assistance unit who does not receive an assistance check because he or she has been suspended from AFDC or because his or her need falls below the \$10 minimum payment level is a recipient.

Subp. 114. **Recoupment.** "Recoupment" means the actions taken by a local agency to reduce one or more monthly assistance payments in order to reclaim the value of overpayments, according to part 9500.2620, items C and D.

Subp. 115. **Recovery.** "Recovery" means actions taken by a local agency to reclaim the value of overpayments through voluntary repayment, recoupment from the assistance payment, or court actions.

Subp. 116. **Recurring income.** "Recurring income" means a form of income which:

A. is received periodically, and may be received irregularly when receipt can be anticipated even though the date of receipt cannot be predicted; and

B. is from the same source or of the same type that is received and budgeted in a prospective month and is received in one or both of the first two retrospective months.

Subp. 117. **Redetermination of eligibility.** "Redetermination of eligibility" means the process by which information is collected periodically by a local agency and used to determine a recipient's continued eligibility for AFDC.

Subp. 118. **Residence.** "Residence" means the county in which a child lives according to Minnesota Statutes, section 256.79 and part 9500.2140.

Subp. 119. **Retrospective.** "Retrospective" means looking back on conditions in a past month.

Subp. 120. **Retrospective budgeting.** "Retrospective budgeting" means a method of determining the amount of assistance in which the payment month is the second month after the budget month.

Subp. 121. **Second adult standard.** "Second adult standard" means the portion of the AFDC family allowance so named and described in part 9500.2440, subpart 5, item C.

Subp. 122. **Secondary school.** "Secondary school" means a school which is accredited by the Minnesota Department of Education as a secondary school under Minnesota Statutes, section 120.05, subdivision 2 or equivalent level technical or vocational school or an educational program which provides a GED.

Subp. 123. **Settlement.** "Settlement" means a resolution of financial responsibility by the commissioner when there is a dispute between or among local agencies concerning which county is financially responsible for a person's assistance.

Subp. 124. **Social Security Act.** "Social Security Act" means the act authorized under United States Code, title 42, sections 301 to 1399.

Subp. 125. **Social Security Administration.** "Social Security Administration" means that organizational part of the United States Department of Health and Human Services.

Subp. 126. **Social services.** "Social services" means the services included in a county's community social services plan which are administered by the county board as described under Minnesota Statutes, section 256E.03, subdivision 2.

Subp. 127. **Special adult standard.** "Special adult standard" means the portion of the AFDC family allowance so named and described in part 9500.2440, subpart 5, item E.

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PROPOSED RULES

Subp. 128. **Special child standard.** "Special child standard" means the portion of the AFDC family allowance so named and described in part 9500.2440, subpart 5, item D.

Subp. 129. **State medical review team.** "State medical review team" means the person or group of persons designated by the commissioner to determine incapacity under part 9500.2220.

Subp. 130. **Statewide administration.** "Statewide administration" means the administration of uniform program standards throughout Minnesota.

Subp. 131. **Strike.** "Strike" means the action by employees defined under Minnesota Statutes, section 179.01.

Subp. 132. **Substantial gainful employment.** "Substantial gainful employment" means employment which averages at least 30 hours per week on a monthly basis and which is compensated at the level of the federal minimum wage or at the minimum standard for that employment in a geographic area, whichever is greater.

Subp. 133. **Supplemental security income.** "Supplemental security income" means the program authorized under title XVI of the Social Security Act.

Subp. 134. **Support.** "Support" means the provision of financial assistance, exclusive of payments-in-kind, by an absent parent to a caretaker or a local agency. Support includes the payments made to or on behalf of an eligible child or payments made to or on behalf of the caretaker.

Subp. 135. **Title IV-A.** "Title IV-A" means that part of the Social Security Act.

Subp. 136. **Title IV-B.** "Title IV-B" means that part of the Social Security Act.

Subp. 137. **Title IV-E.** "Title IV-E" means that part of the Social Security Act.

Subp. 138. **Title XIX.** "Title XIX" means that part of the Social Security Act.

Subp. 139. **Title XX.** "Title XX" means that part of the Social Security Act.

Subp. 140. **Two-party payment.** "Two-party payment" means an assistance payment issued by a local agency to a caretaker and another person jointly so that neither party can liquidate the payment without the signature of the other party.

Subp. 141. **Underpayment.** "Underpayment" means an assistance payment, resulting from a calculation error, a client reporting error, or a misapplication of program requirements by a local agency, which is less than the amount for which an assistance unit is eligible.

Subp. 142. **Unearned income.** "Unearned income" means income received by a person which does not meet the definition of earned income. Unearned income includes interest, dividends, unemployment compensation, disability insurance payments, veterans benefits, pension payments, return on capital investment, insurance payments or settlements, and severance payments.

Subp. 143. **Unemployment compensation.** "Unemployment compensation" means the insurance benefit paid to an unemployed worker under Minnesota Statutes, sections 268.03 to 268.231.

Subp. 144. **Uniformed services.** "Uniformed services" means the United States Army, Navy, Air Force, Marine Corps, Coast Guard, and National Oceanographic and Atmosphere Administration.

Subp. 145. **Unsubsidized employment.** "Unsubsidized employment" means employment under which the wage or salary is paid exclusively from private funds of the employer without sharing or direct incentive payments from the WIN, community work experience, Job Training Partnership Act, or similar governmental work experience program.

Subp. 146. **Vendor.** "Vendor" means a provider of goods or services.

Subp. 147. **Vendor payment.** "Vendor payment" means a payment made by a local agency directly to a vendor.

Subp. 148. **Verification.** "Verification" means the process a local agency uses to establish the accuracy or completeness of information from an applicant, a recipient, a third party, or other source as that information relates to program eligibility or the assistance payment.

Subp. 149. **Water and sewer system.** "Water and sewer system" means the fixed structures required to provide water to and to dispose of sewage from a home. The water and sewer system includes the interior plumbing of a house, exterior water and sewer mains, drainage fields, cisterns, cesspools, wells, and pumps.

Subp. 150. **Welfare fraud.** "Welfare fraud" means those actions through which assistance is wrongfully obtained and which are actionable as theft under Minnesota Statutes, section 256.98.

Subp. 151. **Willfully or intentionally.** "Willfully" or "intentionally" means knowing or having reason to know the consequences of one's action or failure to act.

Subp. 152. **Work incentive program or WIN.** "Work incentive program" or "WIN" means the program authorized under title

IV-C of the Social Security Act and administered by the Minnesota Department of Jobs and Training.

Subp. 153. **Work study program.** "Work study program" means a program operated or approved by a secondary school which allows a student to earn academic credit by working for a public or private sector employer.

Subp. 154. **Wrongfully obtaining assistance.** "Wrongfully obtaining assistance" means:

A. the action of an applicant or recipient to willfully or intentionally withhold, conceal, or misrepresent information which results in a household's receipt of assistance in excess of the amount for which it is eligible under the program and the eligibility basis claimed by the applicant or recipient;

B. the receipt of real or personal property by a person without providing reasonable compensation and for the known purpose of creating another person's eligibility for assistance; or

C. the action of a person to conspire with or knowingly aid or abet another person to wrongfully obtain assistance.

9500.2100 APPLICATION FOR ASSISTANCE.

Subpart 1. **Where to apply.** A person who wishes to apply for assistance shall apply at the local agency in the county in which that person lives.

Subp. 2. **Local agency responsibility to provide information.** A local agency shall inform a person who inquires about the program's eligibility requirements and how to apply for AFDC. A local agency shall offer the person brochures developed by the commissioner that describe how to apply for AFDC.

Subp. 3. **Application form and accompanying advisory.** A local agency shall offer, by hand or mail, the application forms prescribed by the commissioner as soon as a person makes a written or oral inquiry. At that time, the local agency shall inform the person that, if the person is found eligible, the local agency must use the date the application form was submitted to the local agency as the starting point for computing assistance, and that any delay in submitting an application form will reduce the amount paid for the month of application. A local agency shall inform a person that the person may submit an application before an interview appointment. A local agency shall log inquiries for information about assistance. Logs must contain the name of the person making the inquiry, the date of inquiry, the name of the local agency staff member who receives the inquiry, and the content of the inquiry.

To apply for assistance, a person shall submit an application form to a local agency. Upon receipt of an application, a local agency shall stamp the date of receipt on the face of the application.

An applicant may withdraw his or her application at any time by giving written or oral notice to the local agency. The local agency shall issue a written notice confirming the withdrawal. The notice must inform the applicant of the local agency's understanding that the applicant has withdrawn the application and no longer wants to pursue it. When, within ten days of the date of the agency's notice, an applicant informs a local agency in writing that he or she does not wish to withdraw the application, the local agency shall reinstate the application and finish processing the application.

Subp. 4. **Assessment of and issuance for initial needs.** When a person inquires about assistance, a local agency shall ask the person if immediate or emergency needs exist. When a person has emergency needs, the local agency shall determine that person's eligibility for emergency assistance unless the person's needs can be met through other sources or by promptly processing an application for monthly assistance.

A. When emergency assistance payment is issued for a person who makes application for AFDC, and that person is later determined to be eligible for assistance, the issuance under emergency assistance must be considered an assistance payment when:

(1) the emergency assistance payment is issued for basic needs included in the AFDC family allowance standard;

(2) the emergency assistance payment is issued for current needs for a payment month or months in which that person is also eligible for assistance; and

(3) the emergency assistance payment for a month does not exceed the amount that person is eligible to receive under part 9500.2620.

B. When a person qualifies under item A, subitems (1) and (2) must apply.

(1) When all of the emergency assistance payment is later counted as an assistance payment, the person shall not be considered a recipient of emergency assistance, and the limitations under part 9500.2820, subpart 12 must not apply.

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PROPOSED RULES

(2) When emergency assistance payment for a current month's need is less than the assistance payment determined under part 9500.2620 for that same month, additional assistance must be issued for the difference.

C. When an emergency does not exist, a local agency may issue assistance before it completes the verification of eligibility. However, when an applicant is later found ineligible for that assistance, the local agency may not claim federal or state AFDC financial participation in the cost of the assistance issued. When federal and state AFDC financial participation is not available, the local agency may request general assistance state financial participation according to general assistance payment standards if the applicant was eligible for that program.

Subp. 5. **Verification of information on application.** A local agency shall verify information provided by an applicant as specified in part 9500.2420.

Subp. 6. **Processing application.** Upon receiving an application, a local agency shall determine the applicant's program eligibility, approve or deny the application, inform the applicant of its decision according to part 9500.2740, subpart 5, and issue assistance when the applicant is eligible. When a local agency is unable to process an application within 45 days, the local agency shall inform the applicant of the reason in writing.

Subp. 7. **Invalid reason for delay.** A local agency shall neither delay a decision on program eligibility nor delay issuing assistance:

A. by treating the 45-day processing period as a waiting period, except as provided in part 9500.2300, item E;

B. by delaying approval or issuance of assistance pending the decision of the county board;

C. by delaying issuance of initial assistance checks more than seven calendar days to accommodate the county's check issuance schedule;

D. for remaining family members when WIN registration requirements in part 9500.2700, subpart 16 have not been met by a mandatory registrant, unless that registrant is a nonexempt principal wage earner; or

E. by awaiting the result of a referral to a local agency in another county when the county receiving the application does not believe it is the county of financial responsibility.

Subp. 8. **Changes in residence during application.** The requirements of subparts 6 and 7 apply without regard to the length of time that an applicant remains, or intends to remain, a resident of the county in which application is made. When an applicant leaves the county where application was made but remains in the state, part 9500.2880 applies, and the local agency may request additional information from the applicant about changes in circumstances related to the move.

Subp. 9. **Additional applications.** Until a local agency issues notice of approval or denial, additional applications submitted by an applicant are void. However, an application for monthly assistance and an application for emergency assistance may exist concurrently. More than one application for monthly assistance or emergency assistance may exist concurrently when the local agency decisions on one or more earlier applications have been appealed to the commissioner and the applicant asserts that a change in circumstances has occurred that would allow program eligibility.

A local agency shall require additional application forms or supplemental forms as prescribed by the commissioner when a payee changes his or her name, when the basis for program eligibility changes, or when a caretaker requests the addition of another person to the assistance unit.

9500.2140 BASIC ELIGIBILITY REQUIREMENTS.

Subpart 1. **Citizenship.** To be eligible for AFDC, a member of an assistance unit must be a citizen of the United States, an alien lawfully admitted to the United States for permanent residence, or an alien otherwise permanently residing in the United States under color of law.

Subp. 2. **Minnesota residence.** Minnesota residence is an eligibility requirement for AFDC. A person who enters Minnesota from another state and receives assistance from that state must not be considered a Minnesota resident until the last month in which that state issues an assistance payment. Minnesota residence is established according to the provisions in items A to E.

A. A person who lives in Minnesota and who entered Minnesota with a job commitment or to seek employment in Minnesota, whether or not that person is currently employed, is considered a resident of Minnesota. Neither a length of prior or future residence nor an intent to remain in Minnesota is required.

B. A person who enters Minnesota for a reason other than seeking employment, and who intends to remain in Minnesota, is a resident of Minnesota. No length of prior residence is required.

C. A person who lives in vehicles or other temporary places, including transient facilities, is a resident of Minnesota when that person is physically present in Minnesota on an ongoing basis and meets the requirements of item A or B.

D. A person placed in Minnesota by another state under Minnesota Statutes, section 257.40 or a juvenile who enters

Minnesota from another state under Minnesota Statutes, section 260.51 shall not be considered a resident of Minnesota. A person placed in another state by Minnesota under Minnesota Statutes, section 257.40 or a juvenile who enters another state from Minnesota under Minnesota Statutes, section 260.51 shall maintain Minnesota residence.

E. Subitems (1) to (3) constitute loss of Minnesota residence for purposes of the program:

- (1) an absence from Minnesota for more than one month, except as allowed under subpart 5;
- (2) an absence involving either the establishment of a residence outside of Minnesota or the abandonment of the Minnesota home; or
- (3) an assertion of residence in another state in order to receive assistance.

Subp. 3. **Deprivation as eligibility factor.** To be eligible for AFDC, a dependent child must be deprived of parental support or care under part 9500.2180, 9500.2220, 9500.2260, or 9500.2300 due to the death, incapacity, or continued absence from the home of a parent or the unemployment of the parent who is the principal wage earner.

Subp. 4. **Dependent child.** An assistance unit shall include at least one dependent child, except that program eligibility may exist for a woman beginning with her seventh month of pregnancy and for the parents or a caretaker relative of a dependent child receiving supplemental security income with no other children in the home.

Subp. 5. **Physical presence.** To be eligible for AFDC, a dependent child and a caretaker must live together except as provided in items A to C.

A. The physical presence requirement is met when a child is required to live away from the caretaker's home to meet the need for educational curricula that cannot be met by, but is approved by, the local public school district, the home is maintained for the child's return during periodic school vacations, and the caretaker continues to maintain responsibility for the support and care of the child.

B. The physical presence requirement is met when an applicant caretaker or applicant child is away from the home due to illness or hospitalization when the home is maintained for the return of the absent family member, the absence is not expected to last more than six months beyond the month of departure, and the conditions of subitem (1), (2), or (3) apply:

- (1) when the child and caretaker lived together immediately prior to the absence, the caretaker continues to maintain responsibility for the support and care of the child, and the absence is reported at the time of application;
- (2) when the pregnant mother is hospitalized or out of the home due to the pregnancy; or
- (3) when the newborn child and mother are hospitalized at the time of birth.

C. The absence of a caretaker or child does not affect eligibility for the month of departure when he or she received assistance for that month and lived together immediately prior to the absence. Eligibility also exists in the following month when the absence ends on or before the tenth day of that month. A temporary absence of a caretaker or a child which continues beyond the month of departure must not affect eligibility when the home is maintained for the return of the absent family member, the caretaker continues to maintain responsibility for the support and care of the dependent child, and when one of subitems (1) to (7) apply:

- (1) when a recipient caretaker or recipient child is absent due to illness or hospitalization, and the absence is expected to last no more than six months beyond the month of departure;
- (2) when a recipient child is out of the home due to a foster care placement, when the placement will not be paid through Title IV-E funds, and when the absence is expected to last no more than six months beyond the month of departure;
- (3) when a recipient child is out of the home for a vacation, the vacation is not with an absent parent, and the absence is expected to last no more than two months beyond the month of departure;
- (4) when a recipient child is out of the home due to a visit or vacation with an absent parent under part 9500.2260, the home of the child remains with the caretaker under part 9500.2260, subpart 3, the absence meets the conditions of part 9500.2260, subpart 4, item C, and the absence is expected to last no more than two months beyond the month of departure;
- (5) when a recipient caretaker is out of the home due to a death or illness of a relative, incarceration, training, or employment search and suitable arrangements have been made for the care of the child, or when a recipient child is out of the home due to incarceration, and the absence is expected to last no more than two months beyond the month of departure;

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PROPOSED RULES

(6) when a recipient caretaker and a recipient child are both absent from Minnesota due to a situation described in subitem (5) or vacation, and the absence is expected to last no more than one month beyond the month of the departure; or

(7) when a recipient child has run away from home, and another person has not made application for that child, assistance must continue for no more than two months following the month of departure.

Subp. 6. Ineligibility of labor dispute participants. An assistance unit is ineligible for any month in which a caretaker parent participates in a strike on the last day of that month. Participation in a strike on the last day of the month by any other member of the assistance unit renders only that member ineligible. A person is considered to be "participating" in a strike if he or she, with others, actually refuses to provide services to his or her employer. A person who is unable to work due to a lockout by his or her employer, or because a labor dispute among other parties has reduced or eliminated demand for the person's services, is not considered on strike.

9500.2180 DEATH OF PARENT.

The death of one or both parents constitutes deprivation of parental support or care. To be eligible for AFDC, a dependent child must live with a person who is a caretaker, as defined under part 9500.2440, subpart 7, and must meet the income and resource limitations of the program.

9500.2220 INCAPACITY OF PARENT.

Subpart 1. Requirements for disclosure of medical and social information. The applicant or recipient is responsible for proving his or her incapacity. An applicant or recipient who claims incapacity shall provide supporting medical evidence to a local agency when the local agency requires that evidence to determine initial and ongoing program eligibility. When medical evidence, by itself, does not prove incapacity, a local agency shall request social information to supplement the medical evidence. The applicant or recipient shall provide the names of licensed physicians or licensed psychologists who have information relevant to their incapacity. The applicant or recipient shall provide the local agency with materials he or she has which are relevant to his or her incapacity.

Subp. 2. Referral to state medical review team. When a local agency cannot determine incapacity from the medical evidence and social information, the local agency shall submit the evidence and information to the commissioner so that the state medical review team can decide whether incapacity exists. The applicant or recipient and the local agency shall provide the state medical review team with additional information it requires to determine incapacity. The state medical review team's decision is binding on the local agency.

Subp. 3. Changes in circumstances. A local agency shall review any reported changes in circumstances for continued program eligibility based on incapacity.

A. When an incapacitated parent resumes or begins employment of less than 100 hours per month or which pays less than the federal minimum wage, the local agency shall continue to treat the parent as incapacitated for the period granted under the most recent determination of incapacity. At the end of that period, the local agency shall evaluate the parent's employment and current medical evidence and social information to determine whether the incapacitated parent can perform substantial gainful employment.

B. A recipient is no longer eligible under this part when medical evidence or social information documents that the recipient can resume substantial gainful employment or care of a dependent child, or when the recipient begins substantial gainful employment. Before ending assistance under this item, the local agency shall allow the recipient an opportunity to demonstrate another basis of AFDC eligibility.

9500.2260 CONTINUED ABSENCE OF PARENT.

Subpart 1. Continued absence. Continued absence of a parent exists when a parent lives out of the home of the dependent child and the absence interrupts or ends the absent parent's support, care, or guidance of that child. There is no minimum time period used to establish absence of a parent. The absence may be permanent or temporary, and a temporary absence may be of a known or indefinite duration. When support payments made on behalf of a dependent child are less than the AFDC family allowance standard for a dependent child, the child is considered deprived of parental support for purposes of determining continued absence. Two exceptions apply when program eligibility based on continued parental absence is determined.

A. A child is not eligible when a parent is absent solely by reason of active duty in the uniformed services of the United States. The absence must be presumed to be solely because of uniformed service duty when the parent had been living in the home immediately prior to entering active duty, no subsequent divorce or legal separation has been filed, and the parent who is in the home cannot document a reason for the absence other than, or in addition to, the active duty.

B. A child is eligible when a parent is a convicted offender but is permitted to live at home while serving a court-imposed sentence by performing unpaid public work or unpaid community service during the workday. Provision must not be made for the offender's needs in computing the amount of the assistance payment described in parts 9500.2440, 9500.2600, and 9500.2620.

Subp. 2. Visitation. Regular or sporadic visitation by an absent parent does not, by itself, constitute the provision of care or

guidance as defined in part 9500.2060. When an absent parent is present in the child's home so often that a local agency questions whether absence exists, the issue shall be resolved by determining whether the absent parent lives in the home of the child.

Subp. 3. **Evidence of home.** Evidence of a home includes: the amount of time spent there as opposed to other residences; where the majority of personal belongings are kept; the address given to a current employer; the address given for current school registration; the mailing address for government benefits which require mailing to the current address; the address recently used to apply for credit; the address for service of legal documents; the address given to creditors or utility companies as a current address; vehicle registration, driver's license, or post office address which has been changed since the absence; and the frequency, type, and length of absences. A local agency shall evaluate each applicable item of evidence together with other items when determining the home, and a local agency must consider all circumstances together to determine whether continued absence exists. A maildrop does not constitute evidence of a home.

Subp. 4. **Shared custody.** This subpart applies to court ordered and noncourt ordered custody arrangements. The language of a court order that specifies joint legal or physical custody must not, in and of itself, preclude a determination that a parent is absent. Absence must be determined based on the actual facts of the absence and according to the provisions of this part.

A. When a dependent child spends time in each of the parents' homes within a payment month, the child's home shall be considered the home in which the majority of the child's time is spent. When this time is exactly equal within a payment month, or when the parents alternately live in the child's home within a payment month, the child's home shall be with that parent who is applying for AFDC, unless the child's needs for the full payment month have already been met through the provision of assistance to the other parent for that month.

B. When the physical custody of a dependent child alternates between parents for periods of at least one payment month, each parent shall be eligible for assistance for any full payment months the child's home is with that parent, except under the conditions in item C.

C. When a dependent child's home is with one parent for the majority of time in each month for at least nine consecutive calendar months, and that child visits or vacations with the other parent under the provisions of part 9500.2140, subpart 5, item C, subitem (4), the child's home shall remain with the first parent even when the stay with the second parent is for all or the majority of the months in the period of the temporary absence.

Subp. 5. **Special circumstances.** A child is considered deprived of the support, care, or guidance of a parent when:

- A. paternity has not been established under law;
- B. a child has been adopted by a single parent; or
- C. a child is born from artificial insemination to an unmarried mother.

Subp. 6. **Substitute parent.** The determination of whether a child is deprived of parental care or support due to the absence of the parent from the child's home must be made only in relation to the child's parent. Under this requirement, the presence of a substitute parent or another person in the household must not be a reason for denying or ending assistance.

Subp. 7. **Return of parent to child's home.** When an absent parent returns to live with the child and the other parent, financial need exists, and application is made under another basis of eligibility, the local agency shall continue assistance payment until that application is approved, withdrawn, or denied, when:

- A. application is made during the month of the absent parent's return; or
- B. the return of the absent parent is reported timely according to part 9500.2700, subpart 7, and application is made within ten calendar days from the date the report of the return is received by the local agency.

9500.2300 UNEMPLOYED PARENT.

To be considered an unemployed parent, a parent must meet the requirements in items A to H.

- A. The parent's family is in need according to the provisions of parts 9500.2000 to 9500.2740.
- B. The parent's unemployment is not the result of participation in a labor dispute.
- C. The parent is employed less than 100 hours per month. The parent may exceed that standard for a particular month when employment is intermittent and the excess hours of employment are of a temporary nature as evidenced by the fact that the hours of employment were under the 100-hour standard for the prior two months and are expected to be under the standard for the next month.

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PROPOSED RULES

D. The parent has not quit or refused a bona fide offer of employment or training for employment in the last 30 days unless the termination or refusal was for good cause as provided under part 9500.2700, subpart 19.

E. The parent has not been fully employed during the 30-day period preceding the receipt of assistance on the basis of unemployed parent.

(1) When employment is less than 100 hours in the month employment is lost but was 100 or more hours in the preceding month, the last day of the preceding month must be considered the last day of full employment.

(2) When employment is 100 hours or more in the month employment is lost, the day employment is lost must be considered the last day of full employment.

(3) Program eligibility must be established as of the date of application, the 31st day following the last day of full employment, or the day all other eligibility factors are met, whichever is later.

F. The parent shall be:

(1) registered with WIN or qualified for an exemption from WIN. When the parent is an exempt principal wage earner, the other parent, unless exempt, shall satisfy the registration and cooperation requirements of WIN; or

(2) registered with the local job service office when the county does not operate a WIN program.

G. The parent shall have:

(1) received or been qualified to receive unemployment compensation during the year prior to the month of the original application for assistance, or shall have been qualified to receive compensation if the work performed had been covered by unemployment compensation; or

(2) worked at least six quarters during any 13 calendar quarter period ending within one year prior to the quarter of original application for assistance and earned the equivalent of not less than \$50 per quarter during this period. Compensation for this work may be:

(a) in United States dollars or in a foreign currency that purchases goods and services equal to or exceeding \$50 in United States currency; or

(b) in the form of food, shelter, personal items, medical care, and services of a fair market value equal to or exceeding \$50 if purchased in the county of residence.

Work performed includes the labor or services rendered to an employer or through self-employment that was necessary to secure that compensation.

Cooperation in the WIN program or a community work experience program qualifies as a quarter of work under this item.

H. The parent shall be the principal wage earner, having earned the greater of the two parents' incomes, except for income received in-kind, during the 24 months immediately preceding the month of application for assistance under this part. When there are no earnings or when earnings are identical for each parent, the applicant may designate the principal wage earner, and that designation must not be transferred after program eligibility is determined as long as assistance continues without interruption.

9500.2340 PROPERTY LIMITATIONS.

Subpart 1. **General provisions of property ownership.** A local agency shall apply the provisions of items A to D to real and personal property. A local agency shall use the equity value of legally available real and personal property, except property excluded in subparts 2 and 3, to determine whether an applicant or recipient is eligible for assistance.

A. When real or personal property is jointly owned by two or more persons, the local agency shall assume that each person owns an equal share, except that either person owns the entire sum of a joint personal checking or savings account. When the owners document greater or smaller ownership, the local agency shall use that greater or smaller share to determine the equity value held by an applicant or recipient. Other types of ownership must be evaluated according to law.

B. Real or personal property owned by an applicant or a recipient must be presumed legally available unless the applicant or recipient documents that the property is not legally available to him or her. When real or personal property is not legally available, its equity must not be applied against the limits of subparts 2 and 3.

C. An applicant shall disclose whether he or she has transferred real or personal property valued in excess of the property limits in subparts 2 and 3 for which reasonable compensation was not received within one year prior to application. A recipient shall disclose all transfers of property valued in excess of these limits according to the reporting requirements in part 9500.2700, subpart 7. When a transfer of real or personal property without reasonable compensation has occurred, subitems (1) and (2) apply.

(1) The person who transferred the property shall provide the property's description, information needed to determine the property's equity value, the names of persons who received the property, and the circumstances of and reasons for the transfer.

(2) When the transferred property can be reasonably reacquired, or when reasonable compensation can be secured, the property is presumed legally available to the applicant or recipient.

D. A recipient may build the equity value of the recipient's real and personal property to the limits in subparts 2 and 3.

Subp. 2. **Real property limitations.** Ownership of real property by an applicant or recipient is subject to the limitations in items A and B.

A. A local agency shall exclude the homestead of an applicant or recipient, according to the provisions in subitems (1) to (3).

(1) An applicant or recipient who is purchasing real property through a contract for deed and using that property as a home is considered the owner of real property.

(2) The total amount of land that can be excluded under this subpart is limited to two adjoining platted lots in an incorporated city or town, 80 adjoining acres in an incorporated city or town when that land is not platted into lots, and in all other areas, no more than 80 acres. Additional adjoining lots or land must be assessed as to their legal and actual availability according to subpart 1.

(3) When real property that has been used as a home by a recipient is sold, the local agency shall treat the cash proceeds from that sale as excluded property for a period of three months when the recipient intends to reinvest them in another home and maintains those proceeds, unused for other purposes, in a separate account.

B. The equity value of real property which is not excluded under item A and which is legally available must be applied against the limits in subpart 3. When the equity value of the real property exceeds the limits under subpart 3, the applicant or recipient may qualify to receive nine months of assistance when he or she makes a good faith effort to sell the property and signs a legally binding agreement to repay the amount of assistance issued during that nine months. When the property is sold during the nine months, the assistance unit receives assistance for the month the property is sold, and the net proceeds are less than the amount of assistance issued, the amount which must be repaid shall be the net proceeds from that sale. When the property is sold after the nine-month period, or in a month when assistance is not received by the assistance unit, the full amount of assistance received during the nine-month period must be considered an overpayment and is subject to recovery.

Subp. 3. **Other property limitations.** The equity value of all nonexcluded real and personal property must not exceed \$1,000. To determine whether the value of an item of real or personal property is to be counted, a local agency shall exclude the value of real and personal property listed in items A to P:

A. One motor vehicle, when its equity value does not exceed \$1,500 exclusive of the value of special equipment for a handicapped household member. To establish the equity value of a vehicle, a local agency shall subtract any outstanding encumbrances from the loan value listed in the N.A.D.A. Official Used Car Guide, Midwest Edition, for newer model cars. The N.A.D.A. Official Used Car Guide, Midwest Edition, is incorporated by reference. It is published monthly by the National Automobile Dealers Used Car Guide Company and is available through the minitex interlibrary loan system. It is subject to frequent change. When a vehicle is not listed in the guidebook, or when the applicant or recipient disputes the value listed in the guidebook as unreasonable given the condition of the particular vehicle, the local agency may require the applicant or recipient to document the value by securing a written statement from a motor vehicle dealer licensed under Minnesota Statutes, section 168.27 stating the amount that the dealer would pay to purchase the vehicle. The local agency shall reimburse the applicant or recipient for the cost of a written statement that documents a lower value.

B. The value of real and personal property, including tools, implements, farm animals, and inventory, but excluding real estate, contracts for deed, and automobiles needed to produce income for the assistance unit.

C. The value of real and personal property owned by a recipient of supplemental security income or Minnesota supplemental aid.

D. The value of real and personal property owned by a parent of a minor caretaker, a stepparent, or a legal guardian, when those persons are not applying for AFDC and are not required to apply for AFDC under part 9500.2440.

E. The value of corrective payments and the AFDC housing allowance, but only for the month in which the payment is received and for the following month.

F. A mobile home used by an applicant or recipient as his or her home.

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PROPOSED RULES

G. Money escrowed in a separate account which is needed to pay real estate taxes or insurance and which is used for this purpose at least semiannually.

H. Money held in escrow under part 9500.2380, subpart 7, item B, by a self-employed person, when the money is used for those purposes at least quarterly.

I. Monthly assistance and emergency assistance payments issued for the current month's need.

J. Income received in a budget month until the end of a corresponding payment month.

K. The value of school loans, grants, or scholarships over the period they are intended to cover.

L. The value of personal property not otherwise specified which is commonly used by household members in day-to-day living.

M. Payments listed in part 9500.2380, subpart 2, item L, which are held in escrow for the period necessary to replace or repair the personal or real property. This period must not exceed three months.

N. One burial plot per member of an assistance unit.

O. The value of a prepaid burial account, burial plan, or burial trust up to \$1,000 for each member of an assistance unit who is covered by that account, plan, or trust.

P. Other real or personal property specifically disregarded by federal law, state law, or federal regulation.

9500.2380 INCOME.

Subpart 1. **Evaluation of income.** To determine program eligibility and the assistance payment amount, a local agency shall evaluate income received by members of an assistance unit, or by other persons whose income is considered available to an assistance unit under parts 9500.2440, 9500.2500, subparts 4 and 5, and 9500.2760. All payments, unless specifically excluded in subpart 2, must be counted as income.

Subp. 2. **Excluded income.** A local agency shall exclude items A to DD from income:

A. payments for basic care, difficulty of care, and clothing allowances received for providing family foster care to children or adults under parts 9545.0010 to 9545.0260 and 9555.5100 to 9555.6400;

B. work and training allowances, incentive payments, and reimbursements received through WIN;

C. work and training allowances received from local agency social services programs;

D. reimbursements for employment training received through the Job Training Partnership Act;

E. reimbursement for out-of-pocket expenses incurred while performing volunteer services, jury duty, or employment;

F. educational grants to an undergraduate student for educational or rehabilitative purposes when that grant is made or insured under a program administered by the United States Commissioner of Education;

G. educational grants issued by the Bureau of Indian Affairs, when assistance income was considered in determining the amount of the grant;

H. income from federally-funded college work study;

I. loans, regardless of purpose, from public or private lending institutions, governmental lending institutions, or governmental agencies;

J. loans from private individuals, regardless of purpose, provided an applicant or recipient documents that the lender expects repayment;

K. state and federal income tax refunds except for the earned income tax credit;

L. funds received for reimbursement, replacement, or rebate of personal or real property when these payments are made from public agencies, issued by insurance companies, awarded by a court, solicited through public appeal, or made as a grant by a federal agency subsequent to a presidential declaration of disaster;

M. payments issued by insurance companies which are specifically designated as compensation to a member of an assistance unit for partial or total permanent loss of function or body part or for payment of medical bills, as required by Minnesota Statutes, section 256.74, subdivision 1, clause (7);

N. reimbursements for medical expenses which cannot be paid by medical assistance;

O. payments by the vocational rehabilitation program administered by the state under Minnesota Statutes, chapter 129A, except those payments that are for current living expenses;

P. in-kind income, including any payments directly made by a third party to a provider of goods and services;

- Q. assistance payments to correct underpayments in a previous month;
- R. payments to an applicant or recipient issued under part 9500.2820;
- S. payments issued under part 9500.2800;
- T. Minnesota property tax refund credits received by an applicant or recipient who does not receive AFDC housing allowances under part 9500.2800, subpart 2;
- U. nonrecurring cash gifts, such as those received for holidays, birthdays, and graduations, which do not equal or exceed \$30;
- V. tribal settlements excluded under Code of Federal Regulations, title 45, section 233.20(a)(4)(ii)(e), (k), and (m).
- W. any form of energy assistance payment made by LIHEAP, payments made directly to energy providers by other public and private agencies, benefits issued by energy providers when the Minnesota Department of Jobs and Training determines that those payments qualify under Code of Federal Regulations, title 45, section 233.53, and any form of credit or rebate payment issued by energy providers;
- X. the first \$50 of child support paid under Code of Federal Regulations, title 45, section 302.51(b)(1);
- Y. income, including retroactive payments, from supplemental security income;
- Z. income, including retroactive payments, from Minnesota supplemental aid;
- AA. proceeds from the sale of real or personal property;
- BB. payments made from state funds for subsidized adoptions under Minnesota Statutes, section 259.40;
- CC. interest payments and dividends from property which is not excluded from and which does not exceed the \$1,000 limit under part 9500.2340, subpart 3;
- DD. income which is otherwise specifically excluded from AFDC program consideration in federal law, state law, or federal regulation.

Subp. 3. **Distribution of income.** Income must be attributed to the person who earns it or to the beneficiary of the income according to items A to E.

A. Income may be allocated from spouse to spouse and from parents to children under age 21, according to parts 9500.2500, subpart 5 and 9500.2600, when the person to whom income is allocated is in financial need according to the standards of the AFDC family allowance table under part 9500.2440 and when that person lives with the dependent child who is applying for or receiving assistance.

B. Funds distributed from a trust, whether from the principal holdings or sale of trust property or from the interest and other earnings of the trust holdings, must be considered income when the income is legally available to an applicant or recipient. Trusts are presumed legally available unless an applicant or recipient can document that the trust is not legally available.

C. Income from jointly owned property must be divided equally among the property owners unless the terms of ownership provide for a different distribution of equity.

D. Income of the sponsors of certain aliens must be considered income to the aliens according to Code of Federal Regulations, title 45, section 233.51.

E. Except as provided under part 9500.2500, subpart 4, item G, deductions are not allowed from the gross income of a financially responsible household member or by the members of an assistance unit to meet a current or prior debt.

Subp. 4. **Earned income.** Earned income is treated according to items A to C.

A. Sick leave payments issued as a result of earned or accrued sick leave time are earned income.

B. Earned income received by persons employed on a contractual basis must be prorated over the period covered by the contract even when payments are received over a lesser period of time.

C. The earned income tax credit, whether received from an employer or from the federal government, is earned income. An applicant or recipient who is eligible for the earned income tax credit is required to apply for it. An applicant or recipient may choose

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PROPOSED RULES

to apply for the credit either when the applicant or recipient files an income tax return for the year in which the applicant or recipient was eligible or in advance through his or her employer.

Subp. 5. **Self-employment earnings.** A local agency shall determine gross earned income from self-employment by subtracting business costs from gross receipts according to subparts 6 to 9.

Subp. 6. **Self-employment deductions.** Self-employment expenses must be subtracted from gross receipts except for the expenses listed in items A to N:

- A. purchases of capital assets;
- B. payments on the principal of loans for capital assets;
- C. depreciation;
- D. amortization;
- E. the wholesale costs of items purchased, processed, or manufactured which are unsold inventory with a deduction for the costs of those items allowed at the time they are sold;
- F. transportation costs which exceed the amount allowed for use of a personal car in the United States Internal Revenue Code;
- G. costs, in any amount, for mileage between applicant or recipient's home and his or her place of employment;
- H. salaries and other employment deductions made for members of an assistance unit or persons who live in the household for whom an employer is legally responsible;
- I. monthly expenses in excess of \$71 for each roomer;
- J. monthly expenses in excess of \$86 for each boarder;
- K. monthly expenses in excess of \$157 for each roomer-boarder;
- L. annual expenses in excess of \$103 or two percent of the estimated market value on a county tax assessment form, whichever is greater, as a deduction for upkeep and repair against rental income;
- M. expenses not allowed by either the United States Internal Revenue Code for self-employment income or the Code of Federal Regulations, title 45, section 233.20(a)(6)(v)(B); and
- N. expenses which exceed 60 percent of gross receipts for child care performed in a recipient's home unless the recipient can document a higher amount. When funds are received from the quality child care program, those funds are excluded from gross receipts, and the expenses covered by those funds must not be claimed as a business expense which offsets gross receipts.

Subp. 7. **Self-employment budget period.** Gross receipts from self-employment must be budgeted in the month in which they are received. Expenses must be budgeted against gross receipts in the month in which those expenses are paid except for items A to C.

A. The purchase cost of inventory items, including materials which are processed or manufactured, must be deducted as an expense at the time payment is received for the sale of those inventory items, processed materials, or manufactured items, regardless of when those costs are incurred or paid.

B. Expenses to cover employee FICA, employee tax withholding, sales tax withholding, employee worker compensation, employee unemployment compensation, business insurance, property rental, property taxes, and other costs which are commonly paid at least annually, but less often than monthly, must be prorated forward as deductions from gross receipts over the period they are intended to cover, beginning with the month in which the payment for these items is made.

C. Gross receipts from self-employment may be prorated forward to equal the period of time over which the expenses were incurred except that gross receipts must not be prorated over a period which exceeds 12 months. This provision applies only when gross receipts are not received monthly but expenses are incurred on an ongoing monthly basis.

Subp. 8. **Farm income.** Farm income is the difference between gross receipts and operating expenses, subject to subpart 6. Gross receipts include sales, rents, subsidies, soil conservation payments, production derived from livestock, and income from sale of home-produced foods. Farm income must be annualized.

Subp. 9. **Rental income.** Income from rental property must be considered self-employment earnings when effort is expended by the owner to maintain or manage the property. A local agency must deduct an amount for upkeep and repairs according to subpart 6, item L, for real estate taxes, insurance, utilities, and interest on principal payments. When an applicant or recipient lives on the rental property, the local agency must divide the expenses for upkeep, taxes, insurance, utilities, and interest by the number of rooms to determine the expense per room. The local agency shall deduct expenses from rental income only for the number of rooms rented, not for rooms occupied by an assistance unit. When no effort is expended by the owner to maintain or manage the property, income from

rental property must be considered unearned income. The deductions described in this subpart must be subtracted from gross rental receipts.

Subp. 10. **Unearned income.** Unearned income is treated according to items A and B.

A. An amount must be deducted for costs necessary to secure payments of unearned income. These costs include legal fees, medical fees, and mandatory deductions such as federal and state income taxes.

B. Payments for illness or disability, except for those payments described as earned income in subpart 4, item A, must be considered unearned income whether the premium payments are made wholly or in part by an employer or by a recipient.

Subp. 11. **Lump sums.** Lump sums received by an assistance unit must be considered earned income under subparts 4 to 9 or unearned income according to subpart 10. Lump sums received by a parent excluded from an assistance unit, by a child excluded from an assistance unit due to a WIN sanction, or a member of an assistance unit must be applied to meet both current and future need of the assistance unit according to part 9500.2560. When a lump sum is received by a stepparent, a parent or legal guardian of a minor caretaker, or a legal guardian, and this person is not included in the assistance unit, the lump sum must be counted as income only in the budget month.

9500.2420 DOCUMENTING, VERIFYING, AND REVIEWING ELIGIBILITY.

Subpart 1. **Information that must be verified.** A local agency shall only require a person to document the information necessary to determine program eligibility and the amount of the assistance payment. Information previously verified and retained by a local agency must not be verified again unless the verification no longer applies to current circumstances.

Subp. 2. **Sufficiency of documentation.** A person shall document the information required under subpart 4 or authorize a local agency to verify it. The burden of providing documents for a local agency to use to verify eligibility is upon the applicant or recipient. A local agency shall help an applicant or recipient to obtain documents which the applicant or recipient does not possess and cannot obtain. When a person and the local agency are unable to obtain primary or alternate documents needed to verify information, a local agency shall accept affidavits from an applicant or recipient as sufficient documentation. Information previously verified and retained by a local agency must not be verified again unless the verification no longer applies to current circumstances.

Subp. 3. **Contacting third parties.** A local agency must not request information about an applicant or recipient which is not of public record from a source other than local agencies, the department, or the United States Department of Health and Human Services without the person's prior written consent. An applicant's signature on an application form shall constitute this consent for contact with the sources specified on that form. A local agency may use a single consent form to contact a group of similar sources, such as banks or insurance agencies, but the sources to be contacted must be identified by the local agency prior to requesting an applicant's consent. A local agency shall not provide third parties with access to information about a person's eligibility status or any other part of the case record without that person's prior written consent, except where access to specific case information is granted to agencies designated by the Minnesota Government Data Practices Act, Minnesota Statutes, chapter 13. Information designated as confidential by the Minnesota Government Data Practices Act must only be made available to agencies granted access under that law and must not be provided to an applicant, recipient, nor a third party.

Subp. 4. **Factors to be verified.** A local agency shall verify factors of program eligibility at the time of application, when a factor of eligibility changes, and at each redetermination of eligibility under subpart 5.

A. A local agency shall verify:

- (1) the social security number of each adult and child applying for assistance;
- (2) the age, identity, and citizenship or resident alien status of each adult and child applying for assistance;
- (3) the incapacity of a parent when the basis of eligibility is an incapacitated parent under part 9500.2220;

(4) the wage and employment history for both parents for the period preceding application when the basis of eligibility is unemployed parent under part 9500.2300. When an applicant cannot document employment, a local agency shall verify the employment by contacting the employer. When this verification and other primary or alternate forms of verification are not available, a local agency shall accept an affidavit from an applicant as a satisfactory substitute for that verification;

(5) the first day of the third trimester when either program eligibility under part 9500.2140, subpart 4, or WIN exemption status under part 9500.2700, subpart 15, item M is based on pregnancy;

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PROPOSED RULES

- (6) school attendance and the date of anticipated completion of school for an 18 year old child;
- (7) the WIN registration of a nonexempt adult or child in a WIN county;
- (8) the registration with a Job Service office of a principal wage earner living in a non-WIN county or exempt under part 9500.2700, subpart 15, item G;
- (9) the marital status of a parent who applies for assistance on the basis of continued absence under part 9500.2260, when a stepparent of the child is living in the home;
- (10) the relationship of a caretaker to the child for whom application is made;
- (11) a WIN exemption based on illness, injury, incapacity, or physical or mental impairment when an applicant or child is not exempt from WIN registration on another basis under part 9500.2700, subpart 15;
- (12) a WIN exemption based on 30 hours of employment when an adult or child is not exempt from WIN registration on another basis under part 9500.2700, subpart 15; and
- (13) a WIN exemption based on school attendance for a 16 or 17-year old dependent child who lives in a county with a WIN program.

B. A local agency shall verify the information in subitems (1) to (7) when it is either acknowledged by an applicant or recipient or obtained through a federally mandated verification system:

- (1) earned income, including gross receipts and business expenses from self-employment;
- (2) unearned income;
- (3) termination from employment;
- (4) real property;
- (5) personal property;
- (6) dependent care costs of an employed caretaker; and
- (7) the number of college credits for daytime courses taken by a person whose WIN exemption is based upon the need to provide full-time care to a child under six years of age.

C. A local agency may verify additional program eligibility and assistance payment factors when it either documents the reason for verifying the factor in the case record of an assistance unit or when it establishes written procedures that identify those circumstances in which additional verification may be required. Additional factors that may be verified, subject to the conditions of this item, are:

- (1) the presence of a child in the home;
- (2) death of a parent or spouse;
- (3) continued absence of a parent;
- (4) residence;
- (5) marital status, except as provided under item A, subitem (9); and
- (6) income and property that an applicant or recipient has not acknowledged receiving or having.

Subp. 5. Redetermination of eligibility; frequency. Redetermination of eligibility of a recipient must occur periodically at least semiannually as allowed under Code of Federal Regulations, title 45, section 206.10(a)(9); less frequently as waived by the United States Secretary of Health and Human Services; or as prescribed by the commissioner based on frequency of change or frequency of error in certain categories of cases as defined by the quality control review process. A local agency shall redetermine the eligibility of a recipient when a recipient household has changed its county of residence. A local agency may redetermine the eligibility of a recipient when a change which affects program eligibility is reported to the local agency.

9500.2440 FAMILY COMPOSITION AND ASSISTANCE STANDARDS.

Subpart 1. Requirement to use standards. A local agency shall determine who is a member of an assistance unit according to subparts 2 to 4. A local agency shall determine the amount of the AFDC family allowance which applies to the size and composition of an assistance unit according to subparts 5 and 6. Payment eligibility and the amount of the assistance payment must be determined by applying the assistance unit's income against the AFDC family allowance standard, according to parts 9500.2380 to 9500.2620.

Subp. 2. Filing unit composition. When an application for assistance is made for a dependent child, that child and all blood related and adoptive minor siblings of that child, along with the parents of that child who live together, must be considered a single filing unit. Program eligibility may exist for a part of a filing unit even though one or more members are ineligible.

Subp. 3. **Assistance unit composition.** An assistance unit is a group of individuals who are applying for or receiving assistance and whose needs are included in the assistance payment under part 9500.2620. Eligible members of a filing unit who are required by federal law to apply for AFDC must be included in a single assistance unit. Members of separate filing units who live together must be included in a single assistance unit when:

- A. one caretaker makes application for separate filing units; and
- B. two caretakers, who are currently married to each other, make application for separate filing units.

Subp. 4. **Multiple assistance units.** When there is more than one filing unit living together, eligibility for the assistance payment must be determined separately for each filing unit except as provided in subpart 3.

Subp. 5. **Application of standards.** The standards that apply to an assistance unit are set forth in items A to E.

A. The children standard must be used for an assistance unit member who is a dependent child or who is a minor caretaker who lives with either parent.

B. The first adult standard must be used for the first eligible adult caretaker and for the first eligible minor caretaker who is emancipated or who lives apart from both parents.

C. The second adult standard must be used for an additional eligible parent caretaker when one parent caretaker is eligible for the first adult standard.

D. The special child standard must be used for an assistance unit that contains no adult because a parent or parents are excluded from an assistance unit either because of failure to register or cooperate with WIN under part 9500.2700, subparts 16 and 17, or because of failure to cooperate with child support enforcement under part 9500.2700, subpart 11, and the parent or parents do not have income to meet their need under subpart 6. The special child standard must be used whenever the only adult or adults in the household receives supplemental security income or Minnesota supplemental aid or both. When an assistance unit includes more than one eligible child, the special child standard must be determined by substituting the first adult standard for the needs of the last eligible child in an assistance unit and combining that amount with the children standard for the remaining children.

E. The special adult standard must be used for an assistance unit that contains only one adult and no dependent child when eligibility exists under part 9500.2140, subpart 4.

Subp. 6. **AFDC family allowance table.** The following table represents the standards in effect on July 1, 1986.

CHILDREN STANDARD		ADULT STANDARDS	
Number of Eligible Children	Monthly Standard Of Need	Eligible Adults	Monthly Standard Of Need
1	\$250	first adult standard	\$187
2	345	second adult standard	73
3	434		
4	510		
5	586		
6	663		
7	729		
8	793		
9	848		
10	902		
over 10	add 53 per additional child		
Special Standard for one child	337	Special Standard for one adult	250

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PROPOSED RULES

Subp. 7. **Persons who may be caretakers.** To be eligible to receive assistance, a dependent child must live with a person who is authorized to be a caretaker under this subpart. A caretaker's eligibility to be included in an assistance unit is subject to subparts 2 and 3, and other eligibility conditions in parts 9500.2140 to 9500.2700. When parental rights to a child have been terminated, the termination must not prevent a person in items A to D, except a parent whose rights were specifically terminated, from being the child's caretaker. A person who may be a caretaker of a dependent child is:

- A. a relative of at least half-blood, including a first cousin, a nephew or niece, or a person of preceding generations who are identified by prefixes of grand, great, or great-great;
- B. a stepparent or step-sibling;
- C. a relationship listed in items A and B when a person has been legally adopted; and
- D. a spouse of a person listed in items A to C or a former spouse of that person when marriage has ended by death or divorce.

9500.2480 DETERMINATION OF AFDC ELIGIBILITY AND ASSISTANCE PAYMENT.

A local agency must determine program eligibility prospectively for a payment month based on its best estimate of income and the circumstances which will exist in the payment month. Except as described in part 9500.2520, subparts 1 and 2, when prospective eligibility exists, a local agency must calculate the amount of the assistance payment using retrospective budgeting. To determine program eligibility and the assistance payment amount, a local agency must apply gross earned income and unearned income, described in part 9500.2380, subparts 4 to 11, received by members of an assistance unit or by other persons whose income is counted for the assistance unit, described under part 9500.2500, subpart 4. This income must be applied to the AFDC family allowance, described in part 9500.2440, subpart 6, subject to the provisions in parts 9500.2500 to 9500.2620. Income received in a calendar month and not otherwise excluded under part 9500.2380, subpart 2, must be applied to the needs of an assistance unit.

9500.2500 AFDC ELIGIBILITY TESTS.

Subpart 1. **Prospective eligibility.** A local agency shall determine whether the eligibility requirements that pertain to an assistance unit, including those in parts 9500.2140 to 9500.2380, will be met prospectively for the payment month. To prospectively assess income, a local agency shall estimate the amount of income an assistance unit expects to receive in the payment month and shall apply the gross income test in subpart 4 and the payment eligibility test in subpart 5.

Subp. 2. **When to terminate.** When an assistance unit is prospectively ineligible for AFDC for at least two consecutive months, assistance must end.

When an assistance unit is prospectively ineligible for only one month and is prospectively eligible the following month, assistance must not end. The income for the single month in which prospective ineligibility exists must be applied retrospectively as described in part 9500.2520, subpart 3 resulting in suspension for the corresponding payment month.

Subp. 3. **Retrospective eligibility.** After the first two months of program eligibility, a local agency must determine whether an assistance unit is prospectively eligible for the payment month and then determine whether the assistance unit is retrospectively eligible by applying the gross income test and the payment eligibility test to the income from the budget month. When either the gross income test or the payment eligibility test is not satisfied, assistance must be suspended when ineligibility exists for one month or ended when ineligibility exists for more than one month.

Subp. 4. **Gross income test.** A local agency shall apply a gross income test both prospectively and retrospectively for each month of program eligibility. An assistance unit is not eligible when income equals or exceeds 185 percent of the AFDC family allowance for the assistance unit. The income applied against the gross income test must include the income of a parent in the filing unit even when that parent is not included in the assistance unit. It must include the earned and unearned income of an eligible relative who seeks to be included in the assistance unit. It must include the unearned income of a dependent child who seeks to be included in the assistance unit. It must include the gross earned income of a dependent child in the assistance unit who is not a full-time student and whose income is from a source other than the Job Training Partnership Act. It must also include the earned or unearned income of a dependent child who is a member of the filing unit but is excluded from the assistance unit because of failure to register or cooperate with WIN. The income in items A to G must be considered in the gross income test:

A. Gross earned income from employment, prior to mandatory payroll deductions, voluntary payroll deductions, wage authorizations, the disregards in part 9500.2580, and the allocations in part 9500.2600, unless the employment income is specifically excluded under part 9500.2380, subpart 2.

B. Gross earned income from self-employment less deductions for self-employment expenses in part 9500.2380, subpart 6 but prior to any reductions for personal or business state and federal income taxes, personal FICA, personal health and life insurance, the disregards in part 9500.2580, and the allocations in part 9500.2600.

C. Unearned income after deductions for allowable expenses in part 9500.2380, subpart 10, but prior to the allocations in part 9500.2600, unless the income has been specifically excluded in part 9500.2380, subpart 2.

D. Gross earned income from employment as determined under item A which is received through the Job Training Partnership Act by a member of an assistance unit who is a dependent child after the child has received both Job Training Partnership Act earnings and assistance for six payment months in the same calendar year.

E. Gross earned income from employment as determined under item A which is received through employment other than the Job Training Partnership Act by a member of an assistance unit who is a dependent child and a full-time student after the child has received both those earnings and assistance for six payment months in the same calendar year.

F. Child support and spousal support received or anticipated to be received by an assistance unit less the first \$50 of current child support.

G. Income as determined under items A to C of a stepparent, a parent of a minor caretaker, and a legal guardian of a minor caretaker who lives in the household and is not in the assistance unit. Subitems (1) to (6) must be deducted from this income:

- (1) child or spousal support paid to a person who lives outside of the household;
- (2) payments to meet the need of another person who lives outside of the household and who is or could be claimed as a dependent for federal personal income tax liability;
- (3) \$75 for work expense when employment equals or exceeds 30 hours per week or \$74 when employment is less than 30 hours per week;
- (4) an amount for the needs of one parent or legal guardian of a minor caretaker or a stepparent at the first adult standard;
- (5) an amount for the needs of the second parent or legal guardian of a minor caretaker at the second adult standard; and
- (6) an amount for the needs of other persons who live in the household but are not included in the assistance unit and are or could be claimed by a parent of a minor caretaker, legal guardian of a minor caretaker, or stepparent as dependents for determining federal personal income tax liability. This amount must equal the AFDC family allowance for a family group of the same composition as the dependent persons described in this subitem.

Subp. 5. **Payment eligibility test.** When an assistance unit satisfies the gross income test, a local agency shall apply the payment eligibility test prospectively and retrospectively for each month of program eligibility to determine whether the assistance unit is eligible to receive assistance. The income described in subpart 4 must be used to determine payment eligibility except that:

- A. earned income of a dependent child who is a part- or full-time student must be excluded;
- B. disregards in part 9500.2580 must be deducted from earned income; and
- C. allocations in part 9500.2600 must be deducted from earned income after the deductions in item B are deducted, and from unearned income of a member of the assistance unit who has financial responsibility for an ineligible member of the household in part 9500.2600.

Income that remains after making the adjustments described in items A, B, and C is considered the net income of the assistance unit and must be applied dollar for dollar against the AFDC family allowance to determine payment eligibility.

9500.2520 CALCULATING PAYMENTS.

Subpart 1. **Prospective budgeting.** A local agency shall use prospective budgeting to calculate the assistance payment amount for the first two months for an applicant who has not received assistance in Minnesota for at least one payment month preceding the first month of payment under a current application.

Subp. 2. **Limitations on prospective budgeting.** The requirements of subpart 1 are subject to items A to E.

A. Income received or anticipated in the first month of program eligibility must be applied against the need of the first month. Income received or anticipated in the second month must be applied against the need of the second month.

B. When assistance payment for any part of the first two months is based on anticipated income, an initial assistance payment amount must be determined based on information available at the time the initial assistance payment is made. When the amount of actual net income is different than the anticipated net income budgeted to determine the assistance payment for the first two months, the assistance unit is liable for an overpayment or is eligible for a corrective payment for the difference between anticipated and actual net income for those two months.

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PROPOSED RULES

C. The assistance payment for the first two months of program eligibility must be determined by budgeting both recurring and nonrecurring income for those two months.

D. Child support income received or anticipated to be received by an assistance unit must be budgeted to determine the assistance payment amount from the month of application through the month in which program eligibility is determined and assistance is authorized. Child support income which has been budgeted to determine the assistance payment in the initial two months is considered nonrecurring income. An assistance unit shall forward the payment of child support to the child support enforcement unit of the local agency for the months which follow the month in which assistance is authorized.

E. An assistance unit who has had assistance suspended for a month as provided by part 9500.2500, subpart 2, and who has experienced a recurring change of at least \$50 in net income, exclusive of the disregards in part 9500.2580, items C and D, in the month preceding the month of suspension or in the month of suspension shall have the assistance payment amount determined prospectively according to items A to D and subpart 1.

Subp. 3. **Retrospective budgeting.** Retrospective budgeting must be used to calculate the monthly assistance payment amount after the payment for the first two months has been made under the provisions of subparts 1 and 2.

Subp. 4. **Limitations on retrospective budgeting.** The requirements of subpart 3 are subject to the limitations of items A and B.

A. Retrospective budgeting is used to determine the amount of the assistance payment in the first two months of program eligibility in the situations described in subitems (1) and (2):

(1) When an assistance unit applies for AFDC for the same month for which assistance has been terminated, the interruption in eligibility is less than one payment month, the assistance payment for the preceding month was issued in Minnesota, and the assistance payment for the immediately preceding month was determined retrospectively.

(2) When a person applies to be added to an assistance unit, that assistance unit has received assistance in Minnesota for at least the two preceding months, and that person has been living with and has been financially responsible for one or more members of that assistance unit for at least the two preceding months.

B. Income received in the budget month by an assistance unit and by a financially responsible household member who is not included in the assistance unit must be applied against the AFDC family allowance to determine the assistance payment to be issued for the payment month, except as provided in subitems (1) to (4).

(1) When a source of income ends prior to the third payment month, that income is not considered in calculating the assistance payment for that month. When a source of income ends prior to the fourth payment month, that income is not considered when determining the assistance payment for that month.

(2) When a member of an assistance unit or a financially responsible household member leaves the household of the assistance unit, the income of that departed household member is not budgeted retrospectively for any full payment month in which that household member does not live with that household and is not included in the assistance unit.

(3) When a child is removed from an assistance unit because he or she is no longer a dependent child, the income of that child is not budgeted retrospectively for payment months in which that child is not a member of the assistance unit, except that income of an ineligible child in the household must continue to be budgeted retrospectively against his or her own needs when the parent or parents of that child request allocation of their income against any unmet needs of that ineligible child.

(4) When a person ceases to have financial responsibility for one or more members of an assistance unit, the income of that person is not budgeted retrospectively for the payment months which follow the month in which financial responsibility ends.

9500.2560 LUMP SUM PAYMENTS.

Subpart 1. **Budgeting lump sum payments.** When a recipient receives a lump sum payment, that lump sum must be combined with all other earned and unearned income received in the same budget month, and it must be applied according to items A to E.

A. A lump sum received during the first two months prospective budgeting is used to determine payment must be combined with other earned or unearned income received in that month and budgeted in the payment month in which it is received.

B. A lump sum received after the first two months of program eligibility must be combined with other income received in that budget month, and the combined amount must be applied retrospectively against the applicable payment month.

C. When a lump sum, combined with other income according to items A and B, is less than the AFDC family allowance for the applicable payment month, the assistance payment is reduced according to the amount of the combined net income. When the combined income is greater than the AFDC family allowance, the combined income must be divided by the AFDC family allowance for the payment month to determine the period over which the lump sum must be budgeted.

(1) When the combined income is greater than the AFDC family allowance for one month and less than the AFDC family allowance for two months, eligibility does not exist in the month the lump sum is received under item A and assistance must be

suspended in the first payment month under item B. The excess, and other income which must be budgeted in the month following the month of ineligibility or suspension, must be deducted from the AFDC family allowance for the second payment month.

(2) When the combined income is equal to or greater than the AFDC family allowance for two or more months, each member of the assistance unit, at the time the lump sum payment was received, shall be ineligible for the determined number of months beginning with the first payment month in which the lump sum is budgeted.

D. When a lump sum is received by an assistance unit or member of an assistance unit in a state other than Minnesota, the period of ineligibility determined by another state does not apply.

E. When a member of an ineligible assistance unit under item C, subitem (2), applies for AFDC for a child who was not a member of the ineligible assistance unit in the budget month in which the lump sum was received, program eligibility may exist for that child as an assistance unit, and only the current income and resources of a financially responsible household member must be considered to determine eligibility and the amount of the assistance payment for that child.

Subp. 2. **Reducing the period of ineligibility.** When an assistance unit is determined ineligible under subpart 1, item C, and reapplies for AFDC before the period of ineligibility ends, a local agency shall redetermine the period of ineligibility after the first payment month by deducting items A to E from the combined income for the initial month in which the lump sum was received:

A. The amount of verified medical payments paid by the assistance unit during the period of ineligibility that, if eligibility for medical assistance had existed, would have been covered by medical assistance.

B. The amount the AFDC family allowance increased during the period of ineligibility.

C. The amount paid by the assistance unit during the period of ineligibility to cover a cost that would otherwise qualify for emergency assistance under part 9500.2820.

D. An amount documented as stolen.

E. An amount that is unavailable because a member of the assistance unit left the household with that amount and has not returned. The month in which that person returns, and any subsequent months, are months of ineligibility according to the period determined in subpart 1, item C.

9500.2580 EMPLOYMENT DISREGARDS.

A local agency shall deduct the disregards in items A to D from gross earned income as defined in part 9500.2380:

A. A \$75 work expense, whether employment is part- or full-time. This disregard must be deducted from the gross earned income of each employed member of an assistance unit and for other financially responsible household members who are ineligible or otherwise excluded from the assistance unit. This expense is deducted for those financially responsible persons under part 9500.2500, subpart 4, item G, subitem (3), prior to the payment eligibility test under part 9500.2500, subpart 5, and must not be deducted a second time under part 9500.2500, subpart 5, item B.

B. A monthly deduction for documented costs for care of a dependent child or an adult dependent who is in the assistance unit. This disregard must only be deducted from the gross income of a member of an assistance unit or an ineligible parent. The deduction must not exceed \$160 per dependent when employment equals or exceeds 30 hours per week, or \$159 per dependent when employment is less than 30 hours per week. A deduction for dependent care costs is not allowed when the care is provided by a member of an assistance unit, by a parent of a dependent child, or by a spouse of a caretaker of a dependent child.

C. A deduction for a \$30 and one-third work incentive disregard. This disregard must be deducted for each employed member of an assistance unit. The first \$30 must be applied against the balance of gross earned income after deductions for the work expense and dependent care have been allowed. A deduction of one-third of the balance must also be applied after allowing the \$30 deduction. This disregard is limited by subitems (1) to (6).

(1) The disregard must not be deducted from the income of an applicant in the initial month when applying the payment eligibility test in part 9500.2500, subpart 5, except that an applicant who has received assistance in Minnesota within four months of the most recent application and who retains eligibility for this disregard from the prior period of eligibility under subitems (2) to (6) shall be eligible for this disregard when determining payment eligibility. When an applicant satisfies the payment eligibility test in the first month, this disregard must be used to calculate the assistance payment amount for that month when the applicant is otherwise eligible to receive it.

(2) Eligibility for this disregard is limited to the four payment months in subitems (3) to (6) and cannot be deducted again

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PROPOSED RULES

from the income of that member of the assistance unit until he or she has not been a recipient in Minnesota for a period of at least 12 consecutive payment months.

(3) The four months of eligibility for this disregard are only those payment months in which any part of the \$30 and one-third work incentive is applied against income. When the four months of eligibility for this disregard are interrupted for at least one payment month before the period of eligibility is completed, eligibility for the entire four months must be reestablished, with the next subsequent month of its use considered to be the first month, except as otherwise noted in subitems (4) to (6).

(4) When this disregard is not applied because income from a recurring source results in suspension of an assistance payment, that month must not be counted as a month of the four-month period, but this interruption does not establish eligibility for a new four-month period.

(5) When employment is ended, reduced, or refused without good cause according to part 9500.2700, subpart 19, a person shall not be eligible for any of the employment disregards under items A to D in the first month following the month in which that employment is ended, reduced, or refused. The month in which those disregards are disallowed must be counted as one of the four consecutive months in the period of eligibility for this disregard and the remaining months of eligibility must be counted in the consecutive months which immediately follow, regardless of loss of eligibility or change in employment status.

(6) When a recipient loses all disregards under this part due to late reporting, according to part 9500.2700, subpart 5, item A, the month in which those disregards are disallowed must be considered as one of the four consecutive months in the period of eligibility for this disregard.

D. A deduction for a \$30 work incentive disregard. This disregard applies for a period of eight months to members of an assistance unit who have completed the four-month period of eligibility for the \$30 and one-third work incentive disregard. This disregard is allowed beginning with the first month following the fourth month of eligibility for the \$30 and one-third work incentive disregard and must be counted in consecutive months regardless of the loss of eligibility or change in employment status.

9500.2600 ALLOCATION FOR UNMET NEED OF OTHER HOUSEHOLD MEMBERS.

An allocation of income must be allowed to meet the need of an ineligible spouse or an ineligible child under the age of 21 for whom the caretaker is financially responsible who also lives with the caretaker. This allocation must be deducted from the caretaker's net earned income after the deductions under part 9500.2580 have been made and from unearned income subject to items A to C.

A. Income of a dependent child in the assistance unit must not be allocated to meet the need of a person who is not a member of the assistance unit, including the child's parent, even when that parent is the payee of the child's income.

B. Income of an assistance unit must not be allocated to meet the need of a member of the household who elects to receive general assistance.

C. An allocation must be made from the caretaker's income to meet the need of an ineligible or excluded spouse up to the amount allowed in the second adult standard. An allocation must be made from the caretaker's income to meet the need of an ineligible or excluded child. That allocation must be made in an amount up to the difference between the payment standard allowed for a member of the assistance unit and the payment standard allowed when that excluded or ineligible child is included in the assistance unit.

9500.2620 AMOUNT OF ASSISTANCE PAYMENT.

The amount of an assistance payment must be equal to the difference between the AFDC family allowance described in part 9500.2440, subpart 6 and net income, except for items A to F.

A. When program eligibility exists for the month of application, the amount of the assistance payment for the month of application must be prorated from the date of application or the date all other eligibility factors are met for that applicant, whichever is later. This provision must apply when an applicant loses at least one day of program eligibility.

B. When the difference between net income and the AFDC family allowance in a payment month is less than \$10, an assistance payment must not be issued, but that month must be considered a month of program eligibility.

C. Overpayments to an assistance unit identified by a local agency or by a court order prior to October 1, 1981, must be recouped by deducting an amount from the assistance payment. This amount must be equal to one-half of the work incentive disregards described in part 9500.2580, items C and D for each payment month a member of the assistance unit is eligible for those disregards.

D. Overpayments to an assistance unit identified by a local agency on or after October 1, 1981, must be recouped according to part 9500.2640, subpart 4.

E. When recoupment reduces the assistance payment, as in items C and D, and the subsequent level of payment is less than \$10, the assistance payment must be made, and the limitations in item B must not apply.

F. An initial assistance payment must not be made to an applicant who is not eligible on the date payment is made.

9500.2640 CORRECTION OF OVERPAYMENTS AND UNDERPAYMENTS.

Subpart 1. **Scope of overpayment.** When a current or former recipient receives an overpayment, the overpayment must be recouped or recovered under the conditions of this part even when the overpayment is due to agency error or to other circumstances outside the person's responsibility or control.

Subp. 2. **Notice of overpayment.** When a local agency discovers that a person has received an overpayment for one or more months, the local agency shall notify that person of the overpayment in writing. A notice of overpayment must specify the reason for the overpayment, the authority for citing the overpayment, the time period in which the overpayment occurred, the amount of the overpayment, and the person's right to appeal. No limit applies to the period in which the local agency is required to recoup or recover the overpayment. A local agency shall recoup or recover an overpayment according to the provisions of subparts 3 and 4.

Subp. 3. **Recovering overpayments from former recipient.** A local agency shall initiate efforts to recover overpayments paid to a person no longer on assistance. A person who is a member of an assistance unit at the time an overpayment occurs is jointly and individually liable for its repayment. The local agency shall request repayment from each former member of the assistance unit who is 18 years of age or older at the time eligibility for assistance ends. When an agreement for repayment is not completed within six months or when there is a default on an agreement for repayment after six months, the local agency shall initiate recovery under Minnesota Statutes, chapter 270A or section 541.05. When a person has been convicted of fraud under Minnesota Statutes, section 256.98, recovery must be sought regardless of the amount of overpayment. When an overpayment balance is less than \$35, and is not the result of a fraud conviction under Minnesota Statutes, section 256.98, the local agency shall not seek recovery under this subpart. The local agency shall retain information about all overpayments regardless of the amount. When a member of that assistance unit reapplies for assistance, the remaining balance must be recouped under subpart 4.

Subp. 4. **Recouping overpayments from current recipient.** When an assistance unit is currently eligible for assistance, the local agency shall recoup an overpayment by reducing one or more monthly assistance payments until the overpayment is repaid. To determine the amount of repayment to deduct from the monthly assistance payment, the local agency shall estimate the amount of income the assistance unit is expected to receive for the month of the assistance payment, deduct anticipated work expenses according to this subpart, and add the value of liquid assets available to the assistance unit at the beginning of that month using the verified information most recently reported by the caretaker. Once the total of net income and liquid assets is determined, the local agency shall determine the amount of the repayment for that month. When an overpayment occurs due to client error, the local agency shall reduce the assistance payment to an amount which, when added to the anticipated net income and current liquid assets, equals 95 percent of the AFDC family allowance. When an overpayment occurs due to agency error, or a combination of client and agency error, the local agency shall reduce the assistance payment to an amount which, when added to the anticipated liquid assets and net income, equals 99 percent of the AFDC family allowance. A local agency shall adjust the amount of recoupment when:

A. an assistance unit documents prior to the first day of the payment month that actual liquid assets are less than the estimated liquid assets; or

B. an assistance unit documents prior to the last day of the month that actual income is less than the estimated income.

Subp. 5. **Determining net income.** A local agency shall determine net income for purposes of recoupment by using:

A. estimates of federal and state income taxes, social security withholding taxes, and mandatory retirement fund deductions;

B. an estimate for dependent care costs without regard to the \$159 and \$160 maximums in part 9500.2580, item B;

C. other personal employment expenses equal to ten percent of an assistance unit's gross earned income unless the caretaker chooses to itemize these expenses. When a caretaker chooses to itemize expenses, the caretaker shall provide the local agency with documentation for those expenses. The local agency shall deduct the expenses in subitems (1) to (6) in lieu of the ten percent:

(1) transportation costs to and from work at the amount allowed by the Internal Revenue Service for personal car mileage;

(2) costs of work uniforms, union dues, and medical insurance premiums;

(3) costs of tools and equipment used on the job;

(4) \$1 per work day for the costs of meals eaten during employment;

(5) public liability insurance required by an employer when an automobile is used in employment and the cost is not reimbursed by the employer; and

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PROPOSED RULES

(6) the amount paid by an employee from personal funds for business costs which are not reimbursed by the employer.

Subp. 6. **Scope of underpayments.** A local agency shall issue a corrective payment for underpayments identified after September 30, 1981, made to a current recipient or to a person who would be a current recipient if an agency or client error causing the underpayment had not occurred. Issuance of corrective payments must occur according to the provisions of subparts 7 and 8.

Subp. 7. **Identifying the underpayment.** An underpayment may be identified by a local agency, by a current recipient, by a former recipient, or by a person who would be a recipient except for agency or client error.

Subp. 8. **Issuing corrective payments.** A local agency must correct an underpayment within seven calendar days after the underpayment has been identified, by adding the corrective payment amount to the monthly assistance payment, by issuing a separate payment, or by reducing an existing overpayment balance. When an underpayment occurs in a payment month and is not identified until the next payment month or later, that underpayment must first be subtracted from any overpayment balance before issuing the corrective payment. An underpayment for a current payment month must not be applied against an overpayment balance and payment must be issued within seven calendar days after the underpayment is identified.

Subp. 9. **Appeals.** A person may appeal an underpayment, an overpayment, and the amount by which an assistance payment will be reduced to recoup the overpayment under part 9500.2740, subpart 8. Appeal of each issue must be timely under Minnesota Statutes, section 256.045. When an appeal based on the notice issued under subpart 2 is not timely, the fact or the amount of that overpayment must not be considered as a part of a later appeal, including an appeal of a reduction of an assistance payment to recoup that overpayment.

9500.2680 PAYMENT PROVISIONS.

Subpart 1. **Checks.** This subpart applies to monthly assistance payments and corrective payments.

A. A local agency shall mail assistance payment checks to the address where a caretaker lives unless the local agency approves an alternate arrangement.

B. A local agency shall mail monthly assistance payment checks within time to allow postal service delivery to occur no later than the first day of each month. Monthly assistance payment checks must be dated the first day of the month.

C. A local agency shall issue replacement checks under the provisions of Minnesota Statutes, section 471.415.

Subp. 2. **Protective, vendor, and two-party payments; when allowed.** Alternatives to paying assistance directly to a recipient may be used only:

A. When the needs of a caretaker are not included in the assistance unit's assistance payment because the caretaker is under sanction for noncooperation with WIN under part 9500.2700, subpart 18. In this case, the assistance payment must be issued by protective or vendor payment in accordance with the Code of Federal Regulations, title 45, sections 224.51(b)(1) and 234.60(a)(12).

B. When the needs of a caretaker are not included in the assistance unit's assistance payment because the caretaker has failed or refused to cooperate with child support enforcement according to part 9500.2700, subpart 11. In this case, the assistance payment must be issued by protective or vendor payment in accordance with Code of Federal Regulations, title 45, section 234.60(a)(13).

C. When a local agency determines that a vendor or two-party payment is the most effective way to resolve an emergency situation under part 9500.2820.

D. When a caretaker makes a written request asking that the local agency issue part or all of the assistance payment by protective, vendor, or two-party payments. The caretaker may withdraw this request in writing at any time.

E. When a caretaker has exhibited a continuing pattern of mismanaging funds under the conditions specified in Code of Federal Regulations, title 45, section 234.60(a)(2).

(1) The director of a local agency must approve a proposal for protective, vendor, or two-party payment for money mismanagement. During the time a protective, vendor, or two-party payment is being made, the local agency shall provide services designed to alleviate the causes of the mismanagement in accordance with Code of Federal Regulations, title 45, section 234.60(a)(8).

(2) The continuing need for and method of payment must be documented and reviewed every six months. The director of a local agency must approve the continuation of protective, vendor, or two-party payment.

(3) When it appears that the need for protective, vendor, or two-party payments will continue or is likely to continue beyond two years because the local agency's efforts have not resulted in sufficiently improved use of assistance in behalf of the child, judicial appointment of a legal guardian or other legal representative must be sought by the local agency.

Subp. 3. **Choosing payees for protective, vendor, and two-party payments.** A local agency shall consult with a caretaker regarding the selection of the form of payment, the selection of a protective payee, and the distribution of the assistance payment to

meet the various costs incurred by the assistance unit. The local agency shall notify the caretaker of the right to appeal the determination that a protective, vendor, or two-party payment should be made or continued and to appeal the selection of the payee.

When a local agency is not able to find another protective payee, a local agency staff member may serve as a protective payee. A person who is not to serve as protective payee is: a member of the county board of commissioners; the local agency staff member determining financial eligibility for the family; special investigative or resource staff; the staff member handling accounting fiscal processes related to the recipient; or a landlord, grocer, or other vendor dealing directly with the recipient.

Subp. 4. Discontinuing protective, vendor, and two-party payments. A local agency shall discontinue protective, vendor, or two-party payments in the month following compliance with WIN requirements under part 9500.2700, subpart 16; in the month following qualification as a member of an assistance unit when a WIN exemption is established under part 9500.2700, subpart 15; in the month following cooperation with the child support enforcement unit under part 9500.2700, subpart 10; and in two years or in the month following the local agency's failure to grant six-month approval to a money management plan, whichever occurs first. At least once every six months, a local agency shall review the performance of a protective payee acting under subpart 2, items A, B, and E to determine whether a new payee should be selected. When a recipient complains about the performance of a protective payee, a review must occur within 30 days.

9500.2700 APPLICANT AND RECIPIENT RESPONSIBILITIES.

Subpart 1. Applicant reporting requirements. An applicant shall provide information on an application form and supplemental forms about his or her circumstances which affect program eligibility or the assistance payment. An applicant shall report any changes in those circumstances under subpart 7 while the application is pending. When an applicant does not accurately report information on an application, both an overpayment and a referral for a fraud investigation under part 9500.2780, subpart 2 may result. When an applicant does not provide information or documentation, the receipt of the assistance payment may be delayed or the application may be denied depending on the type of information required and its effect on eligibility.

Subp. 2. Requirement to apply for other benefits. An applicant or recipient shall apply for benefits from other programs for which they are potentially eligible and which would, if received, offset assistance payments. Failure without good cause to complete application for these benefits must result in denial or termination of assistance. Good cause for failure to apply for these benefits is allowed when circumstances beyond the control of the applicant or recipient prevent him or her from making application.

Subp. 3. Responsibility to inquire. An applicant or recipient who does not know or is unsure whether a given change in circumstances will affect his or her program eligibility or assistance payment shall contact the local agency for information.

Subp. 4. Recipient's redetermination of eligibility form. A recipient shall complete forms prescribed by the commissioner which are required for redetermination of eligibility according to part 9500.2420, subpart 5.

Subp. 5. Household reports. A recipient shall complete monthly or quarterly household report forms as required by the commissioner. To be complete, a household report form must be signed and dated by a caretaker no earlier than the last day of the reporting period; all questions required to determine assistance payment eligibility must be answered, and documentation of earned income must be included. A recipient shall submit the household report form in time for the local agency to receive it by the eighth calendar day of the month following the reporting period covered by the form. When the eighth calendar day of the month falls on a weekend or holiday, a recipient must submit the household report form in time for the local agency to receive it by the first working day that follows the eighth calendar day. Delays in submitting the completed household report form may delay an assistance payment in the month following the month in which the form is due. When the household report form is late without good cause, except as qualified in subpart 6, item C, the recipient is subject to the penalties in items A and B:

A. When a completed household report form is received by a local agency after the last day of the month following the month in which the form is due, and when the delayed household report form reports earned income, an assistance unit shall lose the earned income disregards under part 9500.2580 for the payment month corresponding to the last month covered by the household report form.

B. When a household report form is received by a local agency on or after the first day of the month following the month in which the form is due, assistance must end. When a person requests further assistance, the local agency shall require the assistance unit to reapply. The assistance unit is eligible for assistance payment on the date of reapplication or the date all other eligibility factors are met, whichever is later.

Subp. 6. Late household report forms. Items A to C apply to the requirements in subpart 5.

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PROPOSED RULES

A. When a recipient submits an incomplete household report form before the last working day of the month on which a ten-day notice of termination of assistance can be issued for failure to provide a complete household report form, the local agency shall return the incomplete form on or before the ten-day notice deadline or any ten-day notice of termination which is issued due to the incomplete household report form must be invalid.

B. When a complete household report form is not received by a local agency before the last ten days of the month in which the form is due, the local agency shall send notice of proposed termination of assistance. When a recipient submits an incomplete form on or after the date the notice of proposed termination has been sent, the termination is valid unless the recipient submits a complete form before the end of the month.

C. A local agency shall allow good cause exemptions from the penalties under subpart 5, items A and B, when the factors in subitems (1) to (5), singly, or in combination, cause a recipient to fail to provide the local agency with a completed household report form before the end of the month in which the form is due.

(1) an employer delays completion of employment verification;

(2) a local agency does not help a recipient complete the household report form when the recipient asks for help;

(3) a recipient does not receive a household report form due to mistake on the part of the department or the local agency or due to a reported change in address;

(4) a recipient is ill, or physically or mentally incapacitated; or

(5) some other circumstance occurs that a recipient could not avoid with reasonable care which prevents the recipient from providing a completed household report form before the end of the month in which the form is due.

Subp. 7. Changes which must be reported. A recipient shall report the changes or anticipated changes specified in items A to M within ten days of the date they occur, within ten days of the date the recipient learns that the change will occur, at the time of the periodic redetermination of eligibility under part 9500.2420, subpart 5, or within eight calendar days of a reporting period as in subpart 5, whichever occurs first. A recipient shall report other changes at the time of the periodic redetermination of eligibility under part 9500.2420, subpart 5 or at the end of a reporting period under subpart 5 as applicable. A recipient shall make these reports in writing or in person to the local agency. When a local agency could have reduced or terminated assistance for one or more payment months if a delay in reporting a change specified under items A to M had not occurred, the local agency shall determine whether a timely notice under part 9500.2740, subpart 7 could have been issued on the day that the change occurred. When a timely notice could have been issued, each month's overpayment subsequent to that notice must be considered a client error overpayment under part 9500.2640. Changes in circumstances which must be reported within ten days must also be reported on the household report form for the reporting period in which those changes occurred. Within ten days, a recipient must report changes in:

A. initial employment;

B. the initial receipt of unearned income;

C. a recurring change of more than \$50 per month of net earned or unearned income;

D. the receipt of a lump sum;

E. an increase in resources which may cause the assistance unit to exceed AFDC resource limits;

F. a change in the physical or mental status of an incapacitated parent;

G. a change in the employment status of an unemployed parent;

H. a change in the status of an absent parent, change in the household composition, including departures from and returns to the home of assistance unit members and financially responsible persons, or a change in the custody of a dependent child;

I. the marriage or divorce of an assistance unit member;

J. the death of a parent or a dependent child;

K. a change in address or living quarters of the assistance unit;

L. the sale, purchase, or other transfer of property; and

M. a change in school attendance of a dependent child over 15 years of age or an adult member of an assistance unit.

Subp. 8. Requirement to cooperate with quality control review. To receive assistance, a recipient shall cooperate with the department's quality control review process by providing information that will verify program and assistance payment eligibility upon the request of the department or the local agency.

A. Cooperation in the quality control review process includes both participating in a personal interview with a quality control staff person at a mutually acceptable time and location and assisting the quality control staff person to get the verifications necessary to establish program and assistance payment eligibility for the month of the redetermination of eligibility when those verifications do

not duplicate what already exists in the local agency case record and when getting them does not cause the recipient to incur an expense.

B. When a recipient does not cooperate with the quality control review process and does not have good cause for not cooperating, a local agency must end assistance. The assistance unit shall remain ineligible until they cooperate with the quality control review process or until the last day of the annual period for reporting quality control cases to the federal government, whichever occurs first. A recipient shall have good cause under this subpart only when he or she does not cooperate because of mental or physical disability or illness of such severity and duration that he or she cannot participate within the period that is allotted to complete the quality control review process.

Subp. 9. Requirement to provide social security numbers. To receive assistance, an applicant or recipient shall provide his or her social security number to the local agency. When a social security number and social security card are not provided to the local agency for verification, this requirement is satisfied when an applicant or recipient cooperates with the procedures for verification of numbers, issuance of duplicate cards, and issuance of new numbers which have been established jointly between the Social Security Administration and the commissioner.

Subp. 10. Cooperation with child support enforcement. When the basis of program eligibility for a dependent child is continued absence under part 9500.2260, the caretaker of that child shall cooperate with the efforts of the local agency to collect child and spousal support.

A. A caretaker shall assign the right to collect past due, current, and future support to the local agency. Signing an application form satisfies this requirement under Minnesota Statutes, section 256.74, subdivision 5. The assignment of support ends with the last day of the last month in which a dependent child receives assistance. When assistance ends, a local agency has the right to any unpaid support for the period in which assistance was received.

B. A caretaker shall provide information known to them about an absent parent and requested by either the AFDC unit or the child support enforcement unit, which is required to establish paternity or secure support for the dependent child, unless the caretaker has good cause for refusing to cooperate under subpart 12.

C. When the paternity of a dependent child is not established under law, a caretaker shall cooperate with the child support enforcement unit to determine and establish the child's paternity unless the caretaker has good cause for noncooperation under subpart 12.

D. A caretaker shall forward to the local agency all support he or she receives during the period the assignment of support is in effect according to item A. Support received by a caretaker, and not forwarded to the local agency, must be repaid to the child support enforcement unit for any month following the month in which initial eligibility is determined, except as provided under subpart 11, item B, subitem (3).

Subp. 11. Refusal to cooperate with support requirements. Failure by a caretaker to satisfy any of the requirements of subpart 10 constitutes refusal to cooperate, and the sanctions under item B apply.

A. The AFDC unit of a local agency shall determine whether a caretaker has refused to cooperate within the meaning of subpart 10. Before making this determination, the AFDC unit shall:

(1) allow the child support enforcement unit to review and comment on the findings and basis for the proposed determination of noncooperation;

(2) consider any recommendations from the child support enforcement unit; and

(3) allow the child support enforcement unit to appear at a hearing under part 9500.2740, subparts 8 to 10, which results from an appeal of a local agency action involving cooperation with child support enforcement under subpart 10.

B. Determinations of refusal to cooperate shall have the following effects.

(1) A parent caretaker who refuses to cooperate must not be included in an assistance unit. Payments for the remaining members of the assistance unit are subject to the conditions of part 9500.2680, subpart 2, item B.

(2) A caretaker who is not a parent of a dependent child in an assistance unit may choose to remove that child from the assistance unit or to have his or her own needs removed from the assistance unit, unless otherwise required by federal or state law. When a caretaker chooses to remove his or her own needs, assistance payments for the remaining members of the assistance unit are subject to the conditions of part 9500.2680, subpart 2, item B.

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(3) Direct support retained by a caretaker must be counted as unearned income when determining the amount of the assistance payment.

Subp. 12. **Good cause exemption from cooperating with support requirements.** Before requiring a caretaker to cooperate, a local agency shall notify an applicant that he or she may claim a good cause exemption from cooperating with the requirements in subpart 10, items B to D, under the conditions specified in Code of Federal Regulations, title 45, sections 232.12 and 232.40 to 232.49 at the time of application or at any subsequent time. When a caretaker submits a good cause claim in writing, action related to child support enforcement must stop. The caretaker shall submit evidence of a good cause claim to the local agency within 20 days of submitting the claim.

A. Good cause exists when:

- (1) a dependent child for whom child support enforcement is sought was conceived as the result of incest or rape;
- (2) legal proceedings for the adoption of a dependent child are pending before a court of competent jurisdiction; or
- (3) a parent caretaker is receiving services from a licensed adoption agency to determine whether to keep the child or relinquish the child for adoption, and the services have not been provided for longer than three months.

B. Good cause exists when a caretaker documents that his or her cooperation would not be in the best interest of the dependent child because the cooperation could result in:

- (1) physical harm to the child;
- (2) emotional impairment of the child which would substantially affect the child's functioning; or
- (3) physical harm to or emotional impairment of the caretaker which would substantially affect the caretaker's functioning and reduce the caretaker's ability to adequately care for the child.

C. When an applicant or recipient has difficulty obtaining evidence, the local agency shall help him or her obtain it. When a local agency requires additional evidence to make a determination on the claim for good cause, the local agency shall notify the caretaker that additional evidence is required, explain why the additional evidence is required, identify what form this evidence might take, and specify an additional period that will be allowed to obtain it.

D. A local agency shall determine whether good cause exists by comparing the good cause claim of the caretaker against the sufficiency of the evidence.

E. Once a local agency determines that good cause exists for a caretaker, the exemption from cooperating under subpart 10, items B and C must remain in effect for the period the dependent child remains eligible under that application, except for subitems (1) to (4).

(1) A good cause exemption allowed because a child was conceived as the result of incest or rape must continue until a subsequent acknowledgement of paternity or an application for adoption by a second parent is submitted for that child.

(2) A good cause exemption allowed because of adoption proceedings must be issued for a fixed period of time based on the expected time required to complete adoption proceedings. The exemption must be extended when the required time is longer than was anticipated and must stop when adoption proceedings are discontinued or completed.

(3) A good cause exemption allowed because of adoption counseling must last no more than three months from the time the counseling began.

(4) A good cause exemption must be allowed under subsequent applications without additional evidence when the factors which led to the exemption continue to exist. A good cause exemption allowed under item B must end when the factors which led to allowing the exemption have changed.

F. A good cause exemption which has been allowed by a local agency for a caretaker must be honored by the local agency in the county of residence when the caretaker moves into that county, until the factors which led to allowing the exemption change.

G. When a local agency denies a claim for a good cause exemption, the local agency shall require the caretaker to submit additional evidence in support of a later claim for a good cause exemption before the local agency stops acting to enforce child support under this subpart.

H. Following a determination that a caretaker has good cause for refusing to cooperate, a local agency shall take no further action to enforce child support until the good cause exemption ends according to item E.

Subp. 13. **Work requirements.** AFDC work requirements are based upon whether an applicant or recipient lives in a WIN or a non-WIN county.

Subp. 14. **Work requirements in non-WIN counties.** An applicant or recipient who is the principal wage earner in an assistance unit whose program eligibility is based on the unemployment of a parent under part 9500.2300 must be currently registered with the

local job service office and fulfill any other employment and training participation responsibilities mandated by federal or state law. When a principal wage earner does not comply with this requirement, the entire assistance unit is ineligible for assistance.

Subp. 15. Work requirements in WIN counties. An applicant or recipient living in WIN counties, regardless of their basis of program eligibility under parts 9500.2180 to 9500.2300, shall register with and cooperate with the local WIN office unless the local agency determines that the applicant or recipient is exempt. An applicant or recipient who is exempt from mandatory WIN registrant status is a:

- A. Child under the age of 16.
- B. Student who is at least 16 but less than 18 years of age and meets the conditions of part 9500.2060, subpart 58, item A, B, C, or F.
- C. Person who is 18 years of age and meets the conditions of part 9500.2060, subpart 39, items B and C.
- D. Person who, for up to 90 consecutive days, is ill or injured to the extent that the illness or injury temporarily prevents participation in training or employment. Determination of an exemption under this item must be made by the AFDC unit and may be allowed without medical documentation when the illness or injury is evident. Exemptions for illnesses or injuries which extend for 90 days or more must be documented by medical evidence as described in item E.
- E. Person who, for at least 90 consecutive days, is physically or mentally incapacitated when the incapacitating factors, by themselves or in conjunction with the person's age, prevent participation in training or employment. The incapacity must be documented by medical evidence. The medical evidence must include a prognosis and diagnosis of the impairment from at least one licensed physician or licensed psychologist. The local agency shall give the applicant or recipient voluntary referral to the Minnesota Department of Vocational Rehabilitation upon determination of the exemption.
- F. Person who is 65 years of age or older.
- G. Person who lives a distance from the local WIN office that requires round trip commuting time of more than two hours by the means of transportation available to the recipient and exclusive of the time needed to transport children to and from child care.
- H. Person who is needed in the home to care for another person living in the household who is physically or mentally incapacitated. The incapacity and the need for care must be documented by medical evidence from a licensed physician or licensed psychologist.
- I. Parent or caretaker of a child under the age of six years who is providing full-time care for that child. A person who is anticipated to be absent from the child for an average of at least 30 hours per week during the current and following month, exclusive of absences related to providing care for the child, does not qualify for this exemption.
- J. Person who is currently employed for an average of at least 30 hours per week in each month at unsubsidized employment.
- K. Parent who is not a principal wage earner but who is in an assistance unit whose program eligibility is based on the unemployment of a parent. However, the principal wage earner in the assistance unit must be registered with and cooperating with WIN in order for the other parent to claim this exemption.
- L. Person, who after applying for AFDC, volunteered to participate under the Volunteers in Service to America (VISTA) program authorized by the Domestic Volunteer Service Act of 1973, Public Law Number 93-113.
- M. Pregnant woman when the pregnancy has entered the third trimester.

Subp. 16. Registration in WIN counties. Items A to C apply to persons and local agencies in WIN counties.

A. Upon application, a local agency shall refer an applicant who is not exempt under subpart 15 to the WIN office for registration. A local agency shall refer a previously exempt recipient to the WIN office for registration when the recipient no longer meets exemption conditions in subpart 15.

B. A local agency shall use the verified date of an applicant's registration for WIN to establish the first date of program eligibility.

C. When an applicant or recipient does not register with the WIN program and that applicant or recipient is not exempt, subitems (1) to (5) apply.

(1) When an assistance unit applies for AFDC under part 9500.2300 and the principal wage earner is the mandatory WIN

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registrant, no member of the assistance unit is eligible until the date the principal wage earner registers for WIN. When the basis of program eligibility for a recipient assistance unit changes to unemployed parent in a month and the principal wage earner is referred to WIN, the remaining assistance unit members are eligible for the month of change, and when the provisions of part 9500.2260, subpart 7 apply, until the application is approved, denied, or voluntarily withdrawn. Eligibility for the additional unmet need of the principal wage earner must not begin until the date the WIN registration occurs.

(2) When a mandatory WIN registrant is not the incapacitated parent in an assistance unit whose basis of program eligibility is incapacitated parent under part 9500.2220 and that mandatory registrant has not registered with WIN, assistance payment may be made for the needs of the remaining members of the assistance unit. The needs of the incapacitated parent must be met at the first adult standard and the income of the mandatory registrant must be deducted at the second adult standard to meet his or her need. When the incapacitated parent also receives supplemental security income, the income of the mandatory WIN registrant must be deducted at the first adult standard to meet his or her need.

(3) When a mandatory WIN registrant is a parent, the basis of program eligibility is death of a parent or continued absence, and that caretaker has not registered for WIN, only the dependent child is eligible for assistance. The income of the parent must be deducted at the first adult standard when the net income of that caretaker equals or exceeds that standard. The income of the parent must be deducted at an amount equal to the difference between the special child standard and the AFDC family allowance for an assistance unit which includes that caretaker when the net income of the caretaker is less than the first adult standard.

(4) When a mandatory WIN registrant who is a caretaker relative other than a parent is not registered for WIN, only the dependent child is eligible for assistance. The child's needs must be met at the children standard.

(5) When a mandatory WIN registrant is a dependent child who is not registered for WIN, that child is not eligible for assistance. When that child is the only dependent child in the assistance unit, the entire assistance unit is not eligible for assistance.

Subp. 17. Cooperation with WIN. When a mandatory WIN registrant completes WIN registration, he or she shall cooperate with WIN as a condition of continued receipt of assistance. The WIN office makes determinations of failure to cooperate. When the WIN office determines that a person is not cooperating, the local agency will be notified by the WIN office of the action taken by WIN to deregister that person.

Subp. 18. Sanctions for failure to cooperate with WIN. When a WIN office notifies a local agency that it has deregistered an applicant or recipient from WIN for failure to cooperate with the WIN requirements, the local agency shall apply the sanctions in items A to C beginning with the first payment month following deregistration in which notification and appeal rights under part 9500.2740, subparts 5 to 10, allow application of those sanctions.

A. When a mandatory WIN registrant is also the principal wage earner under part 9500.2300, the entire assistance unit is ineligible for three payment months for the first occasion of deregistration or for six payment months for subsequent occasions of deregistration. When, during the period of sanction, the principal wage earner leaves the home or when either parent becomes incapacitated and eligibility is established under parts 9500.2180 to 9500.2260, the sanction period ends for the remaining members of the assistance unit.

B. When a mandatory WIN registrant in an assistance unit that qualifies under part 9500.2300 is the parent who is not the principal wage earner, or when the mandatory WIN registrant is a parent caretaker in an assistance unit which qualifies under part 9500.2180, 9500.2220, or 9500.2260, that parent caretaker must be removed from the assistance unit. Allocations to a parent who is under sanction must be made according to part 9500.2600. The parent caretaker must be ineligible for a period of three payment months for the first occasion of deregistration or for six payment months for subsequent occasions of deregistration. Protective or vendor payments must be issued for the needs of the remaining members of the assistance unit under part 9500.2680, subpart 2, item A until the period of the sanction ends or the recipient who is under sanction is no longer a member of the filing unit.

C. When a recipient who is under sanction is a caretaker relative other than a parent or is one of several dependent children, that person must be removed from the assistance unit for three payment months for the first occasion of deregistration or for six payment months for subsequent occasions of deregistration.

Subp. 19. Good cause for refusing or terminating employment or training. For purposes of applying the sanctions under subpart 18, WIN must determine when good cause exists when a current WIN registrant refuses or terminates employment or training or does not cooperate with WIN. A local agency shall determine whether good cause for refusing or terminating employment or training exists under parts 9500.2300, item D, and 9500.2580, item C, subitem (5). When WIN has participated in an employment or training placement and does not apply a sanction for refusal or termination under subpart 18, a local agency shall not apply the sanctions under part 9500.2300, item D, or 9500.2580, item C, subitem (5), for that same refusal or termination. A local agency shall determine good cause by applying the conditions in items A to H.

A. Good cause exists when a job or training program is not suited to the physical or mental capacity of the person or when it will have an adverse effect on that person's physical or mental health. Evidence from a licensed physician or licensed psychologist must document this claim.

B. Good cause exists when the round trip commuting time from a person's residence to a training or job site is more than two hours by available means of transportation, exclusive of the time to transport children to and from child care.

C. Good cause exists when licensed child care is required but is not available.

D. Good cause exists when the work or training site is unsafe under health and safety standards established by the Occupational Safety and Health Administration and the Minnesota Department of Jobs and Training.

E. Good cause exists when a person documents discrimination at the job or training site on the basis of age, sex, race, religion, or place of national origin.

F. Good cause exists when the hourly gross employment earnings are less than the federal or state minimum wage for that type of employment, whichever is applicable.

G. Good cause exists when a person's net income from employment after deductions for the actual costs of subitems (1) to (8) is less than the AFDC family allowance for the assistance unit described under part 9500.2440, subpart 6:

- (1) state and federal income tax withholding;
- (2) FICA;
- (3) health and dental insurance;
- (4) transportation;
- (5) mandatory retirement;
- (6) union dues;
- (7) meals; and
- (8) the expenses required for the care of a dependent.

H. Good cause exists when the job which is offered is vacant due to a strike, lockout, or other bona fide labor dispute.

9500.2740 APPLICANT AND RECIPIENT RIGHTS AND LOCAL AGENCY RESPONSIBILITIES TO APPLICANTS AND RECIPIENTS.

Subpart 1. **Right to information.** An applicant or recipient has the right to obtain information about the benefits, requirements, and restrictions of AFDC.

Subp. 2. **Right to apply.** A person has the right to apply, including the right to reapply, for AFDC. A local agency shall inform a person who inquires about AFDC of his or her right to apply, shall explain how to apply, and shall offer a brochure about the program. When a local agency ends assistance, the local agency shall inform the recipient in writing of the right to reapply.

Subp. 3. **Information about other programs.** A local agency shall inform an applicant or recipient about other programs administered by the local agency for which, from its knowledge of the person's situation, the person may be eligible. A local agency shall display, in a public place, brochures provided by the commissioner describing the medical assistance, general assistance, general assistance medical care, emergency assistance, food stamp, and Minnesota supplemental aid programs.

Subp. 4. **Right to authorized representative.** An applicant or recipient has the right to designate an authorized representative to act in his or her behalf. An applicant or recipient has the right to be assisted or represented by an authorized representative in the application, eligibility redetermination, fair hearing process, and any other contacts with the local agency or the department.

When a local agency determines that it is necessary for a person to assist an applicant or recipient, the local agency shall designate a staff member to assist him or her. The local agency staff member may assist the applicant or recipient to take the actions necessary to submit an application to establish the date of the application.

Upon a request from an applicant or recipient, a local agency shall provide addresses and telephone numbers of organizations that provide legal services at no cost to low income persons.

Subp. 5. **Right of applicant to notice.** A local agency shall notify an applicant of the disposition of his or her application. The notice must be in writing and on forms prescribed by the commissioner. The local agency must mail the notice to the last known mailing address provided by the applicant. When an application is denied, the local agency must notify the applicant in writing of the reasons for the denial, of the right to appeal, and of the right to reapply for assistance.

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Subp. 6. **Right of recipient to notice.** A local agency shall give a recipient written notice of payment reductions, suspensions, terminations, or changes in the use of protective, vendor, or two-party payments. The notice must be on forms prescribed or approved by the commissioner and must be mailed to the last known mailing address provided by the recipient. The local agency shall state on the notice the action it intends to take, the reasons for the action, the recipient's right to appeal the action, the conditions under which assistance can be continued pending an appeal decision, and the related consequences of the action, such as the loss of eligibility for medical assistance.

Subp. 7. **Mailing of notice.** Notices under subparts 5 and 6 must be made according to items A to C:

A. A local agency shall mail a notice to a recipient no later than ten days before the effective date of the action, except as provided in items B and C.

B. A local agency shall mail a notice to a recipient no later than five days prior to the effective date of the action when the local agency has factual information which requires an action to reduce, suspend, or terminate assistance, and this action is based on probable fraud.

C. A local agency shall mail a notice to a recipient no later than the effective date of the action when:

(1) the local agency receives a recipient's monthly or quarterly household report form which includes facts that require payment reduction, suspension, or termination and which contains the recipient's signed acknowledgement that he or she understands that this information will be used to determine program eligibility or the assistance payment amount;

(2) the local agency verifies the death of a recipient or the payee;

(3) the local agency receives a signed statement from a recipient that assistance is no longer wanted;

(4) the local agency receives a signed statement from a recipient that provides information which requires the termination or reduction of assistance, and the recipient shows in that statement that he or she understands the consequences of providing that information;

(5) the local agency verifies that a recipient is hospitalized and does not qualify under part 9500.2140, subpart 5, item C, subitem (1);

(6) the local agency verifies that a recipient has entered a state hospital or a licensed residential facility for medical or psychological treatment or rehabilitation;

(7) the local agency verifies that a member of an assistance unit has been approved to receive assistance by another county or state;

(8) the local agency verifies that a member of an assistance unit has been placed in foster care, except as specified in part 9500.2140, subpart 5, item C, subitem (2); or

(9) the local agency cannot locate a caretaker's whereabouts and mail from the local agency has been returned by the post office showing that the post office has no forwarding address.

Subp. 8. **Appeal rights.** An applicant, recipient, or former recipient has a right to request a fair hearing when aggrieved by an action or by inaction of a local agency. Requests for fair hearings must be submitted in writing to a local agency or to the department. These requests must be mailed within 30 days after an applicant or recipient receives written notice of the local agency's action or within 90 days when an applicant or recipient shows good cause for not submitting the request within 30 days. A former recipient who receives a notice of overpayment may appeal the action contained in the notice in the manner and within the periods described in this subpart. Issues which may be appealed are:

A. a denial of the right to apply for assistance;

B. the failure of a local agency to promptly approve or deny an application;

C. a denial of an application for assistance;

D. a suspension, reduction, or termination of assistance;

E. the calculated amount of an overpayment and the calculated level of recoupment due to that overpayment;

F. the eligibility for and calculation of a corrective payment;

G. other factors involved in the calculation of an assistance payment; and

H. the use of protective, vendor, or two-party payments.

Subp. 9. **Rights pending hearing.** A local agency shall not reduce, suspend, or terminate payment either when an aggrieved recipient requests a fair hearing prior to the effective date of the action or within ten days of the mailing of the notice, whichever is later. A local agency may increase or reduce an assistance payment while an appeal is pending when the circumstances of the recipient change and are not related to the issue under appeal. Assistance issued pending a fair hearing is subject to recovery under

part 9500.2640, subpart 3 when, as a result of the fair hearing, the commissioner finds that the applicant or recipient was not eligible for the assistance. The commissioner's order is binding on a local agency and shall be implemented subject to Minnesota Statutes, section 256.045, subdivision 7. No additional notice is required to enforce the commissioner's order.

A local agency shall reimburse appellants for reasonable and necessary expenses of their attendance at the hearing, such as child care and transportation costs.

Subp. 10. **Hearings.** Fair hearings shall be conducted at a reasonable time, date, and place by an impartial referee employed by the department. An applicant, recipient, or former recipient may introduce new or additional evidence relevant to the issues on appeal. Recommendations of an appeals referee and decisions of the commissioner are based on evidence introduced at the hearing and are not limited to a review of the propriety of a local agency action.

Subp. 11. **Right to review records.** A local agency shall allow an applicant or recipient to review his or her own case records that are held by a local agency and which are related to eligibility for or the assistance payment from the program, except those case records to which access is denied under Minnesota Statutes, chapter 13. A local agency shall make case records available to an applicant or recipient as soon as possible but in no event later than the fifth business day following the date of the request. When an applicant, recipient, or authorized representative asks for photocopies of material from the case record, the local agency shall provide one copy of each page at no cost.

Subp. 12. **Right to manage affairs.** An applicant or recipient has the right to manage his or her financial affairs, except as provided in part 9500.2680, subpart 2. A local agency shall not restrict the use of an assistance payment except as specified in parts 9500.2680, subpart 2, 9500.2800, and 9500.2820.

Subp. 13. **Right to protection.** Under the circumstances defined in this subpart, a local agency shall refer an applicant or recipient to the social services unit of the local agency. Neither a referral for social services nor an applicant's or recipient's cooperation with the referral is a condition of eligibility for continued assistance. Referral must be made according to items A and B.

A. Referral must be made when a minor caretaker does not live with his or her parent or legal guardian. The local agency shall inform the minor caretaker that a referral is being made to the social services unit and that use of and cooperation with the social services unit is not a requirement for the receipt of assistance.

B. Referral must be made when a local agency staff member has reason to believe that neglect, physical abuse, or sexual abuse exists as defined under Minnesota Statutes, section 626.556, subdivision 2 or 626.557, subdivision 2. The local agency shall also fulfill the requirements for reporting to proper authorities when the conditions in Minnesota Statutes, section 626.556, subdivision 3 or 626.557, subdivision 3 exist.

9500.2760 SUPPORT FROM PARENTS OF MINOR CARETAKERS LIVING APART.

Subpart 1. **General provisions.** A parent who lives outside the home of a dependent child who is an unemancipated minor caretaker of an assistance unit is financially responsible for that minor caretaker unless the parent is a recipient of assistance, supplemental security income, Minnesota supplemental aid, medical assistance, general assistance, or general assistance medical care, and a court order does not otherwise provide a support obligation.

Subp. 2. **Amount of support payment.** The amount of support to be paid by a parent, except a parent specified in subpart 4, must be determined according to items A to F.

A. A minor caretaker shall provide information required by the local agency to identify the whereabouts of his or her absent parent.

B. A local agency shall notify an absent parent of his or her legal responsibility to support a minor caretaker and shall request that the absent parent provide the following:

- (1) the amount of the parent's earned and unearned income for the previous tax year;
- (2) the amount of the parent's earned and unearned income for the current month;
- (3) the number and names of dependents who are claimed or could be claimed by the parent on federal income tax forms;
- (4) the amount of annual medical bills paid by the parent;
- (5) the amount of annual housing costs paid by the parent;
- (6) the costs for utilities and repairs to the home which are paid by the parent; and

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PROPOSED RULES

(7) the amount of annual educational costs for family members paid by the parent.

C. When a parent of a minor caretaker does not provide the information requested under item B, the local agency shall refer the matter to the county attorney. Assistance to the minor caretaker must not be denied, delayed, reduced, or ended because of the lack of cooperation of the minor caretaker's parent.

D. When the information requested under item B is received by a local agency, the local agency shall compare the parent's income against the following scale using the conditions and procedures specified in item E.

Size of Family	Annual Cost of Living (ACL)
1	\$ 7,466
2	12,084
3	17,380
4	20,774
5	23,891

Twenty percent of the ACL for a family of five must be added for each additional family member.

E. The parent's income is the parent's earned income plus unearned income, determined by the methods in part 9500.2500, subpart 4, items A to C. To determine family size, each person claimed or who could be claimed by a parent as a dependent on federal income tax forms, exclusive of the minor caretaker, must be included. A deduction from income must be allowed for the amount that medical, educational, and housing costs together exceed 30 percent of the parent's income. When the amount of income, after the allowable deduction, exceeds the annual income level in item D, a parent is liable to pay one third of the excess for the annual support of the minor caretaker. These payments must be paid monthly to the minor caretaker or to the local agency on behalf of the minor caretaker.

F. A local agency shall notify the parents of the minor caretaker that they are liable for the amount of support determined by the local agency as specified in item E. When the support payment is received by the minor caretaker, it must be treated as unearned income of the assistance unit. When the support payment is not received, or a lesser amount is received in any payment month, the local agency shall refer the matter to the county attorney.

Subp. 3. **Reviews.** A local agency shall review financial responsibility every 12 months until minor caretakers reach the age of 18 or are otherwise emancipated. The local agency shall promptly review the required amount of payment when a parent reports a change in circumstances.

Subp. 4. **Parents under court order for support.** A parent who is required under an existing court order issued under some other authority in state or federal law to pay child support for a minor caretaker is subject to the conditions of that order in lieu of the requirements and contribution levels of subpart 2.

9500.2780 WRONGFULLY OBTAINED ASSISTANCE

Subpart 1. **Applicability to other laws.** This part outlines procedures that apply to AFDC which anticipate their use in combination with established civil and criminal procedures and law.

Subp. 2. **Responsibility of local agency to act.** In response to welfare fraud allegations received by a local agency, the local agency shall take any or all of the actions in items A to C:

A. A local agency shall refer cases of suspected welfare fraud to the person or unit designated by the county board for investigation of welfare fraud.

B. A local agency shall issue notice under the provisions of part 9500.2740, subpart 7 to reduce or end assistance when the local agency receives facts which show that an assistance unit is not eligible for assistance or for the amount of assistance currently being received.

C. A local agency shall refer cases of probable welfare fraud to the county attorney.

Subp. 3. **Continued program eligibility.** A local agency shall issue assistance when current program eligibility exists even when welfare fraud was proven for an earlier period or is currently under investigation, subject to subpart 2.

Subp. 4. **Recoupment and recovery of wrongfully obtained assistance.** A local agency shall recoup or attempt recovery of wrongfully obtained assistance. The amount recouped or recovered must not be more than the amount wrongfully obtained unless it is based on a court judgment. A local agency shall recoup wrongfully obtained assistance according to the procedures in part 9500.2620, items C and D until the full amount of wrongfully obtained assistance is repaid, seek voluntary repayment, or initiate civil court proceedings to recover any unrepaid balance of the wrongfully obtained assistance.

Subp. 5. **Reporting requirement.** A local agency shall gather and report statistical data required by the commissioner on local agency activities to prevent welfare fraud.

9500.2800 AFDC PAYMENTS FOR FUNERALS, HOUSING, AND SPECIAL NEEDS.

Subpart 1. **Payment of funeral and cemetery charges.** A local agency shall pay expenses incurred, up to a maximum of \$370, for the funeral of a person who was a recipient at the time of death. In addition to these expenses, the local agency shall pay the actual cemetery charges. The local agency shall not pay for funeral expenses or cemetery charges when relatives of the deceased recipient, who had a legal responsibility to support the deceased recipient, are able to pay the expenses according to Minnesota Statutes, section 256.935. When donations from third parties or payments from other sources, including payments from prepaid burials or insurance, are conditioned on use for specific items such as a cemetery lot, interment, transportation of the body, or a religious service, the local agency must not apply these donations or payments against other items which the local agency must otherwise provide under this subpart. Amounts paid by a local agency for funeral expenses or cemetery charges under this subpart are reimbursable by the commissioner and recoverable from the estate according to Minnesota Statutes, section 256.935, subdivision 1. To determine the sufficiency of an estate to pay for funeral expenses, the local agency shall consider the nature and marketability of the assets of the estate.

Subp. 2. **Procedures for payment of AFDC housing allowance.** A recipient is eligible to receive an AFDC housing allowance under Minnesota Statutes, section 256.879 to replace a portion of his or her housing costs attributable to the payment of local property tax. The commissioner shall pay the AFDC housing allowance to a recipient who applies for a Minnesota property tax refund credit under Minnesota Statutes, chapter 290A. The commissioner must not direct payment of the AFDC housing allowance to a recipient who has already received a Minnesota property tax refund credit for the same tax year. The AFDC housing allowance is subject to reduction as an offset against any outstanding state tax liabilities.

Subp. 3. **State appropriation for special needs.** Payments for special need items, as defined and conditioned in subparts 4 to 9, must be paid to a recipient subject to the amount appropriated by the Minnesota legislature. Each quarter, the commissioner shall allocate this appropriation to a local agency in proportion to the number of assistance units served by that local agency in the previous calendar year, compared to the number served in the state.

A. A local agency shall issue these funds to meet special needs of a recipient. Notwithstanding subparts 4 to 9, a local agency is not required to provide special need payments that are more than the amount allocated to the local agency by the commissioner. A local agency must develop written procedures for meeting priority needs of a recipient and may establish waiting lists. A local agency must inform inquirers of the procedures and assure that the procedures are applied consistently within a quarter. A local agency shall log requests for special need items and shall use this log to develop or modify procedures for future quarterly allocations. Dispositions of each request must be included in the log.

B. At the end of each quarter, a local agency shall report the amount of any remaining funds to the commissioner. The commissioner shall adjust future allocations in the same fiscal year so that the remaining funds are reallocated to local agencies which have provided special needs beyond their individual allocations. This reallocation must be made on a pro rata basis in proportion to the amount by which a local agency exceeded its allocation.

Subp. 4. **Relationship between special needs and emergency assistance.** When a person is eligible for an item to be provided from both special need and emergency assistance funds, the local agency shall provide the item through special need funds when these funds are available.

Subp. 5. **Requests for special need funds.** When a local agency receives a request for items which are covered as a special need, the local agency shall provide the recipient with the information in subpart 3, item A; shall inform the recipient that a written request must be made; and may require the recipient to document need for the item. When payment is delayed due to lack of special need funds, or when payment is denied for any reason, the local agency shall notify the recipient in writing of the delay or denial.

Subp. 6. **Household furnishings and appliances.** Items A to S specify the items and special need payment amounts for repair or replacement of household furnishings and appliances:

- A. infant layette, \$35;
- B. infant or child car seat, \$35;
- C. crib and mattress, \$49;
- D. high chair, \$16;

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PROPOSED RULES

- E. cooking stove or range, \$80;
- F. refrigerator, \$93;
- G. water heater, \$186;
- H. bed:
 - (1) twin size (complete), \$72;
 - (2) mattress or box spring (only), \$27;
 - (3) frame, \$18;
- I. bed:
 - (1) full size (complete), \$116;
 - (2) mattress or box spring (only), \$49;
 - (3) frame, \$18;
- J. bedding (includes blanket, pillow and case, sheets), \$20;
- K. chest of drawers, \$26;
- L. lamp, \$13;
- M. washing machine, \$93;
- N. kitchen table, \$24;
- O. kitchen chair, \$10;
- P. couch, \$74;
- Q. living room chair, \$24;
- R. living room table, \$10; and
- S. clothes dryer, \$93.

A recipient must not receive a special need payment for the same item more than once in a three-year period unless the payment is for repair of the item or the item needs replacement because of damage, theft, normal wear and tear, or loss. Abandonment of items during a move or change in living quarters does not constitute loss for this purpose. When the cost of an item is greater than the special need maximum payment, a recipient must document that he or she has other available resources which can be combined with the amount payable from special needs funds to pay for the item. A credit arrangement with the vendor which provides for immediate possession of the item satisfies this requirement, but layaway arrangements which delay the possession of an item until a recipient makes an additional payment do not. A local agency shall make payment for home furnishings and appliances by direct payment to a recipient, unless the recipient requests vendor payment or the recipient's monthly assistance payment is subject to the conditions of Code of Federal Regulations, title 45, section 234.60(a)(2). When a local agency approves a two-party or vendor payment for an item to resolve an emergency under part 9500.2820 and the quarterly special need fund appropriation becomes available before the bill for that payment is received by the local agency, payment must be made according to the conditions of the original approval for payment.

Subp. 7. **Home repairs.** A local agency shall pay for repairs to the roof, foundation, wiring, heating system, chimney, and water and sewer system of a home which is owned and lived in by a recipient. Special need payments for these repairs are conditioned by items A to E.

A. The recipient shall document and the local agency shall verify the need for and method of repair.

B. The payment must be cost effective in relation to the overall condition of the home and in relation to the cost and availability of alternative housing.

C. A recipient must have no other resources for payment. To determine whether a recipient has available resources, the local agency must consider the immediacy of the need for the repair and the likelihood that the recipient may qualify for other programs or secure other resources to cover part or all of the funds needed for the cost of the repair.

D. A recipient shall provide the local agency with one vendor's estimate for the repair. The local agency may require up to two additional estimates when it determines the first is excessive. Any charge for an estimate authorized or required by a local agency must be paid from the appropriation under subpart 3. When one or more estimate is received, a local agency shall approve payment for the estimate which is most cost effective. When a recipient requests vendor payment under item E, a local agency shall condition payment on a written agreement with the vendor and shall not issue payment until it determines that the home repair is satisfactorily completed.

E. A local agency shall make payment for home repairs directly to a recipient unless the recipient requests vendor payment or the recipient's monthly assistance payment is subject to the conditions of Code of Federal Regulations, title 45, section 234.60(a)(2). When a local agency approves a two-party or vendor payment for a home repair to resolve an emergency under part 9500.2820 and the quarterly special need funds appropriation is received by the local agency before the bill for that payment, payment must be made according to the conditions of the original approval for payment.

Subp. 8. **Special diets.** A local agency shall make special need payments to a recipient for the costs of the diets specified in item A. These diets or dietary items must be prescribed by a licensed physician. When these costs are paid by a program other than AFDC, AFDC special need payment must not be made.

A. Payment amounts must be determined as percentages of the allotment for a one person household under the thrifty food plan. The payment amounts are revised annually and published in general notices in the Federal Register. The types of diets that may be paid for, and the percentages of the thrifty food plan which must be used to determine payment amounts, are identified in subitems (1) to (11):

- (1) high protein diet (at least 80 grams daily), 25 percent of thrifty food plan;
- (2) controlled protein diet (40-60 grams and requires special products), 100 percent of thrifty food plan;
- (3) controlled protein diet (less than 40 grams and requires special products), 125 percent of thrifty food plan;
- (4) low cholesterol diet, 25 percent of thrifty food plan;
- (5) high residue diet, 20 percent of thrifty food plan;
- (6) pregnancy and lactation diet, 35 percent of thrifty food plan;
- (7) gluten free diet, 25 percent of thrifty food plan;
- (8) lactose free diet, 25 percent of thrifty food plan;
- (9) anti-dumping diet, 15 percent of thrifty food plan;
- (10) hypoglycemic diet, 15 percent of thrifty food plan;
- (11) ketogenic diet, 25 percent of thrifty food plan.

B. Payment must be issued directly to a recipient as a part of the monthly assistance payment or as a separate monthly payment. Continuing need for the diet must be verified no less often than at each redetermination of eligibility. The local agency shall not require a recipient to document his or her actual expenditures for the dietary items.

Subp. 9. **Verification and preauthorization requirements.** Payments made under subparts 6 to 8 must be made only when a recipient's need for the item is verified by the local agency. A local agency may require prior authorization as a condition of payment, but when the need for a special need item occurs at a time outside of the local agency's business hours, this requirement is satisfied when a recipient contacts the local agency on the next working day to request authorization.

9500.2820 EMERGENCY ASSISTANCE.

Subpart 1. **Applicability.** This part governs the administration of the emergency assistance program funded under title IV-A for needy families with children. This part identifies circumstances under which assistance or services must be provided, conditions of eligibility for that assistance or those services, and the conditions under which the department and a local agency shall administer the program to be consistent with federal requirements for statewide administration and equal access to program benefits by recipients and persons who are not recipients.

Subp. 2. **Definitions.** The terms used in this part have the meanings given to them in items A to O.

A. "Applicant" means a person for whom an application for assistance has been filed with a local agency.

B. "Assistance" means a financial benefit received from the emergency assistance program.

C. "Available resources" means an applicant's property that is liquid or can be liquidated within the time necessary to avoid or promptly alleviate destitution, together with income and public funds for which an applicant is eligible.

D. "Balloon payment" means an amount of money required to be paid on a specific date according to the terms of a contract for deed or mortgage loan agreement and that exceeds the monthly contract for deed or mortgage payment.

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E. "Basic need items" means subsistence items necessary for life and health, including food, safe drinking water, habitable shelter, clothing, medical care; the companion items necessary to assure these needs, including heating fuel, electricity, essential household appliances and furnishings; caregiving services to children and incapacitated adults; transportation, equipment, or other expenses necessary for employment; transportation necessary for medical care; and other goods or services necessary to protect a child's health or safety.

F. "Child" means a person who is under the age of 21 years who lives with a caretaker.

G. "Destitution" means the lack of a basic need item and the lack of resources to provide for that need.

H. "Emergency" means a situation or set of circumstances that causes or threatens to cause destitution to a child.

I. "Family" means the persons who are part of the same household with a child. The term "family" includes that child, siblings who are under the age of 21, parents of that child, and the spouse of the parent. When no parent is present in the household, the family includes the child, the eligible relative caretaker of that child, the spouse of that caretaker, and the spouse or a child of that caretaker who lives in that household.

J. "Family budgeting services" means services which help an applicant or recipient to develop the ability to use its available income and resources to improve his or her financial stability and provide himself or herself with basic need items.

K. "Habitable shelter" means housing that meets the health or safety standards provided under local ordinance, state or federal law, and any specific criteria established by a licensed physician as necessary to the life or health of a child.

L. "Program" means the program of emergency assistance for needy families with children under the age of 21 years.

M. "Threatened destitution" means the destitution that will result in the future unless action is taken.

N. "Utility budget period" means the month of application and the continuous 11-month period immediately preceding that month or a shorter period when an applicant has had no responsibility to pay for utility service for any month of the last 12 months. Unpaid utility bills covering a period of time in excess of 12 months must be divided into two or more utility budget periods.

O. "Utility costs" means charges incurred by an applicant for the provision of electrical, gas, wood, heating fuel, and municipal water and sewer service.

Subp. 3. **Statement of purpose.** The purposes of the program are to avoid and to prevent the destitution of children. The program does so by providing assistance to resolve an emergency and by providing services that reduce the risk of recurrence of destitution.

Subp. 4. **Inquiries.** A local agency shall offer, by hand or mail, an application form and an informational brochure provided by the department as soon as a person makes a written or oral inquiry about the program. A local agency shall offer an application form and brochure on the same day the inquiry is received by the local agency.

Subp. 5. **Application.** Any family with a child may apply for assistance. At that time, a local agency shall explain to an applicant the program's eligibility requirements, the limitation of annual eligibility, the extent of the program's coverage, other programs provided by the local agency or known by the local agency to be applicable to the family's circumstances, and the rights and responsibilities of an applicant for and recipient of assistance.

Subp. 6. **Forms.** A person must submit to a local agency a signed and dated application for emergency assistance on forms prescribed by the commissioner.

Subp. 7. **Interview.** A local agency shall conduct a personal interview with an applicant after receipt of an application for assistance. When the circumstances of an applicant show destitution is imminent or already present, a local agency shall offer to conduct a personal interview on the same day the application is received to determine the applicant's eligibility. In all other cases, the local agency shall conduct a personal interview within a time that does not inhibit the local agency's ability to provide assistance in time to prevent destitution.

Subp. 8. **Processing application.** An application must be processed in a manner that considers the immediacy and severity of the destitution. A local agency shall help an applicant complete the verification process in time to prevent destitution. Verification must be made promptly and must be done by telephone when necessary to avoid destitution. When documentation from a third party is not secured in time, an affidavit from an applicant must be accepted. A local agency shall designate at least one staff person to authorize immediate issuance of assistance. A local agency shall not delay issuance of assistance to get formal action from the county board.

Subp. 9. **Notice of eligibility.** A local agency shall notify an applicant in writing on a form prescribed by the commissioner of its determination of his or her eligibility for assistance. The local agency shall mail or deliver the notice to the applicant within one week of the date the application was submitted unless the applicant is informed in writing within that time of the reason for the delay.

Subp. 10. **Eligibility.** A local agency shall issue assistance to a family, including a migrant family, that meets the conditions of items A to D:

- A. the family must have a child under the age of 21 years who is or, within six months prior to application, has been living with the caretaker;
- B. the family must have an emergency;
- C. the family's available resources must not be sufficient to resolve the emergency; and
- D. the emergency must not exist because a caretaker or child age 16 or over refused employment or training for employment without good cause as defined in part 9500.2700, subpart 19.

Subp. 11. **Covered emergencies.** Assistance must be authorized when a child lacks or is threatened with the loss of basic need items.

A. Emergency need may be caused by eviction, condemnation, cancellation of a contract for deed, mortgage foreclosure, or other relocation; return from residential treatment, long-term hospitalization, incarceration or other separations of a child from the caretaker; civil disorders or strikes; fire, flood, storm, or other natural disaster; or loss or theft of funds.

B. Assistance may be authorized for:

- (1) shelter or shelter deposit;
- (2) moving expenses;
- (3) storage costs necessary to recover property described in part 9500.2800, subpart 6;
- (4) necessary household furnishings described in part 9500.2800, subpart 6;
- (5) necessary household appliances described in part 9500.2800, subpart 6;
- (6) necessary home repairs described in part 9500.2800, subpart 7;
- (7) utility service or utility hookup;
- (8) clothing;
- (9) food;
- (10) safe drinking water;
- (11) necessary medical care;
- (12) necessary dependent care;
- (13) transportation, equipment, or other expenses necessary for employment, subject to subpart 13;
- (14) transportation necessary for medical care; or
- (15) other items necessary for the health or safety of a child.

Subp. 12. **Limitations.** The limitations of the program are listed in items A to G.

A. A local agency shall issue assistance to a family during only one 30-day period in a consecutive 12-month period. A local agency shall issue assistance for needs that accrue before that 30-day period only when it is necessary to resolve emergencies arising or continuing during the 30-day period of eligibility. When emergency needs continue, a local agency may issue assistance for up to 30 days beyond the initial 30-day period of eligibility but only when assistance is authorized during the initial period.

B. A local agency must not issue assistance when uncashed AFDC checks are lost or stolen. Instead, the lost or stolen AFDC checks must be replaced under part 9500.2680, subpart 1, item C.

C. A local agency shall limit assistance for household furnishings and appliances according to part 9500.2800, subpart 6.

D. A local agency shall limit assistance for home repairs according to part 9500.2800, subpart 7.

E. A local agency shall issue assistance for storage costs that are cost effective in relation to the value of the materials in storage and to other alternatives for resolving the emergency.

F. A local agency must not deny an application for assistance because a recipient does not choose to request that future monthly AFDC payments be paid through protective, vendor, or two-party payments. When a local agency determines mismanagement of a monthly AFDC payment has occurred under part 9500.2680, subpart 2, item E, the local agency must proceed with protective, vendor, or two-party payments under that provision.

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G. A local agency may deny assistance to prevent eviction of an otherwise eligible applicant when the local agency determines that an applicant's anticipated income will not cover continued payment of shelter and utility expenses, subject to the conditions in subitems (1) to (3).

(1) A local agency must not deny assistance when an applicant can document that he or she is unable to locate habitable shelter, unless the local agency can document that one or more habitable shelters are available in the community that will result in at least a 20 percent reduction in monthly expense for shelter and utilities and that this shelter will be cost effective for the applicant. When considering cost effectiveness for an applicant, a local agency shall evaluate the appropriateness of the alternative shelter in terms of size in relation to the number of family members, location in relation to special needs of the child, and other factors which would be likely to arise due to the disruption of the move.

(2) When no alternative shelter is identified by either the applicant or the local agency, the local agency must not deny assistance because of the determination that the applicant's anticipated income will not cover continued payment of shelter and utility costs. The local agency shall issue assistance in the amount needed to prevent the eviction.

(3) When alternative living shelter is identified, the local agency shall issue assistance for moving expenses as provided in subpart 18, item D.

Subp. 13. **Issuance of payment.** A local agency shall determine the most effective method of payment to resolve the emergency. Payment may be made either by direct cash payment to an applicant or by vendor or two-party payment. When assistance is issued for employment-related expenses under subpart 11, item B, subitem (13), issuance is limited to an interest-free loan of up to \$100.

Subp. 14. **Available services.** Services allowed under the program are listed in items A to D.

A. A local agency may offer family budgeting services to persons who inquire about the program. Family budgeting services may be provided by local agency staff, including social services staff, or a local agency may contract with qualified persons or agencies to provide the services. When a local agency uses its own staff, administrative costs may be attributed to the program as a part of the local agency's cost allocation process, or the local agency may choose to use its own funds. When a local agency contracts with persons or agencies outside the local agency, the costs are considered program expenditures in the same manner as other program expenditures made on behalf of persons who apply for assistance.

B. A local agency may negotiate on behalf of an applicant with vendors or creditors at the applicant's request or under the conditions of subpart 16, item D.

C. A local agency may provide protective payee or vendor payment services at the request of a recipient for monthly AFDC payments.

D. A local agency may assist an applicant by coordinating local agency financial assistance programs with public or private resources which exist in the community.

Subp. 15. **Termination of utility service.** Assistance payments must be made when an otherwise eligible family has had a termination or is threatened with a termination of municipal water and sewer service, electric, gas, or heating fuel service, or lacks wood when that is the heating source, subject to the conditions of items A and B.

A. A local agency must not issue assistance unless the local agency receives confirmation from a utility provider that assistance combined with payment by the applicant will continue or restore the utility service.

B. A local agency must not issue assistance for utility costs for an applicant who:

(1) effective August 1, 1986, and thereafter, paid less than four percent of the family's gross income toward utility costs due during the utility budget period or while the application is pending;

(2) effective August 1, 1987, and thereafter, paid less than six percent of the family's gross income toward utility costs due during the utility budget period or while the application is pending; and

(3) effective August 1, 1988, and thereafter, paid less than eight percent of the family's gross income toward utility costs due during the utility budget period or while the application is pending.

Subp. 16. **Amounts of payment.** A local agency shall issue assistance for utility costs in an amount that is dependent upon the percent of the family's gross income paid toward utility costs and the percent of the total utility costs paid before the issuance of assistance. A local agency shall determine those amounts according to items A to E.

A. Payment of the balance owed to a utility provider must be paid in full for an applicant who:

(1) effective August 1, 1986, and thereafter, paid no less than eight percent of the family's gross income toward utility costs due during the utility budget period or while the application is pending;

(2) effective August 1, 1987, and thereafter, paid no less than 12 percent of the family's gross income toward utility costs due during the utility budget period or while the application is pending; and

(3) effective August 1, 1988, and thereafter, paid no less than 16 percent of the family's gross income toward utility costs due during the utility budget period or while the application is pending.

B. Payment on the balance owed to a utility provider must be limited to the amounts under item C for an applicant who:

(1) effective August 1, 1986, and thereafter, paid at least four percent and less than eight percent of gross income toward utility costs due during the utility budget period or while the application is pending;

(2) effective August 1, 1987, and thereafter, paid at least six percent and less than 12 percent of gross income toward utility costs due during the utility budget period or while the application is pending; and

(3) effective August 1, 1988, and thereafter, paid at least eight percent and less than 16 percent of gross income toward utility costs due during the utility budget period or while the application is pending.

C. When an applicant pays the amounts specified in item B, a local agency shall issue assistance as follows:

Amounts Paid By The Program		
% of total utility consumption cost paid by applicant prior to issuance of assistance	% of the unpaid balance which will be paid by the program	% of the unpaid balance which must be paid by the applicant
less than 10%	70%	30%
at least 10% and less than 20%	76%	24%
at least 20% and less than 30%	82%	18%
at least 30% and less than 40%	88%	12%
at least 40% and less than 50%	94%	6%
50% or more	100%	0%

D. When a utility provider does not offer a repayment plan to the applicant and the applicant does not have sufficient current funds which, when combined with the assistance, will allow for the continuation or restoration of utility service, a local agency may negotiate with the utility provider on behalf of the applicant. When a utility provider does not withdraw the proposed termination of service, the local agency shall assist the family in seeking alternate arrangements for utility service.

E. The provisions in items A to D must not be construed to prevent the issuance of assistance when a local agency must take immediate and temporary action necessary to protect the life or health of a child.

Subp. 17. **Mortgage and contract for deed arrearages.** A local agency shall issue assistance for mortgage or contract for deed arrearages on behalf of an otherwise eligible applicant according to items A to H.

A. Assistance for arrearages must be issued only when a home is owned, occupied, and maintained by the applicant.

B. Assistance for arrearages must be issued only when no subsequent foreclosure action is expected within the 12 months following the issuance. To make this determination, a local agency shall consider the anticipated mortgage costs over the 12-month period together with the applicant's anticipated income and other circumstances which would affect the applicant's ability to prevent foreclosures during that period.

C. Assistance for arrearages must be issued only when an applicant has been refused refinancing through a bank or other lending institution and the amount payable, when combined with any payments made by the applicant, will be accepted by the creditor as full payment of the arrearage.

D. Costs paid by a family which are counted toward the payment requirements in item E are principal and interest payments on mortgages or contracts for deed, balloon payments, homeowner insurance payments, rental payments for shelter, mobile home lot rental payments, and tax or special assessment payments related to the homestead. Costs paid which are not counted include rental deposits, and down payments and closing costs related to the sale or purchase of real property.

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PROPOSED RULES

E. To be eligible for assistance for the costs in item D which are outstanding at the time of foreclosure, an applicant must have paid at least 30 percent of the family's gross income toward these costs in the month of application and the 11-month period immediately preceding the month of application. When an applicant has received assistance for a prior foreclosure action, the applicant must have paid at least 40 percent of the family's gross income toward these costs in the month of application and the 11-month period immediately preceding the month of application. Assistance for mortgage foreclosures is limited to two occurrences except that assistance issued before August 1, 1986, must not count as an occurrence.

F. When an applicant is eligible under item E, a local agency shall issue assistance for outstanding costs up to a maximum of four times the AFDC family allowance for a family of the size and composition of the family applying for assistance.

G. Payments made under item F constitute a debt owed to the county and the state, but only when the person's interest in the property is sold. A local agency shall file a lien against the property and shall notify the applicant, at the time of application for payment of the arrearage payment, that a lien will be filed.

H. When a local agency determines that an applicant is ineligible for assistance for arrearage payment, but is otherwise eligible for assistance, the local agency shall assist the family with relocation according to subpart 18.

Subp. 18. **Moving expenses.** A local agency shall issue assistance for expenses incurred when a family must move to a different shelter according to items A to D.

A. Moving expenses include the cost to transport personal property belonging to a family, the cost for utility connection, and the cost for securing different shelter.

B. Moving expenses must be paid only when the local agency determines that a move is cost effective.

C. Moving expenses must be paid at the request of an applicant, but only when destitution or threatened destitution exists.

D. Moving expenses must be paid when a local agency denies assistance to prevent an eviction because the local agency has determined that an applicant's anticipated income will not cover continued payment of shelter and utility costs in the applicant's current shelter under subpart 12, item G.

Subp. 19. **Right to appeal.** An applicant shall have the right to appeal a local agency's action or failure to act with reasonable promptness on an application for assistance.

A. A local agency shall inform an applicant in writing of the right to appeal and the procedures to follow in filing an appeal. Within two working days after receiving a written request for an appeal, the local agency shall forward the written request and an agency appeal summary to the appeals office of the department.

B. The appeals office shall schedule a hearing on the earliest available date and, following the hearing, shall promptly forward the decision of the referee to the commissioner.

C. The commissioner shall issue a written order within five working days of receipt of the referee's decision, shall immediately inform the parties of the outcome of the decision by telephone, and shall mail the written decision to the parties no later than the second working day following the date of the commissioner's decision.

9500.2860 RELATIONSHIP TO OTHER PROGRAMS.

Subpart 1. **Medical assistance; applicants.** An applicant may qualify to receive retroactive medical assistance benefits for up to three months before the month of application. An applicant shall provide information about health insurance and other medical coverage held by or available to the applicant, including pending lawsuits or claims for medical costs. An applicant who is a policyholder of health insurance shall assign to the department any rights to policy benefits he or she has during the period of medical assistance eligibility. When an applicant refuses to assign the rights to the department, the caretaker's program eligibility is unaffected, but the caretaker is ineligible for medical assistance. An application is used to determine retroactive medical assistance eligibility and to establish current eligibility for medical assistance, according to items A and B.

A. When a person applies for AFDC, the local agency shall inform the applicant of the existence of retroactive medical assistance and shall determine eligibility for retroactive medical assistance when the applicant requests it.

B. When a local agency approves an AFDC application, the effective date of medical assistance eligibility must be the first day of the month in which program eligibility begins, unless eligibility existed for medical assistance under item A. When a local agency denies an AFDC application and medical assistance is requested, the local agency must accept a medical assistance application. The local agency shall use the date of application for AFDC as the date of application for medical assistance or general assistance medical care.

Subp. 2. **Medical assistance; recipients.** A recipient shall receive medical assistance according to items A to F.

A. A local agency shall reimburse or issue direct payment to a recipient for transportation costs for medical care from medical assistance administrative funds.

B. A local agency must not recover amounts for ineligible medical assistance claims or payments from the monthly assistance payment.

C. A recipient shall inform the local agency of injuries for which a third party payor may be liable for payment of medical costs.

D. A local agency shall allow a recipient eligibility for medical assistance for months during which monthly assistance payments are suspended due to increased earned income or for months where no monthly assistance payments are issued due to the \$10 minimum issuance limitation specified in part 9500.2620, item B.

E. A local agency shall determine eligibility for medical assistance according to subpart 3, item A, when assistance is suspended for a reason other than that in item D.

F. A local agency shall offer services through the EPSDT program on behalf of each applicant or recipient who is less than 21 years of age, subject to parts 9505.1500 to 9505.1690.

Subp. 3. Medical assistance; terminations of assistance. A local agency shall continue medical assistance when assistance ends according to items A to C.

A. When assistance ends solely due to the increased earned income, increased hours of employment of a member of an assistance unit, or increased child support, medical assistance eligibility must be continued for four months from the month in which program eligibility ends.

B. When assistance ends solely because a member of an assistance unit is no longer eligible for the work incentive disregard under part 9500.2580, item C or D, medical assistance must continue for the assistance unit for nine months from the month in which program eligibility ends. When at the end of that nine-month period, the assistance unit would be eligible for assistance except for the loss of the work incentive disregard under part 9500.2580, item C or D, medical assistance must continue for up to three additional months.

C. When assistance is ended due to applying the income from stepparents, grandparents, or siblings to the need of an assistance unit, the local agency shall provide the recipient with an AFDC termination notice that allows one month of medical assistance after assistance ends. To continue eligibility for medical assistance beyond the one month, eligibility must be established under parts 9500.0750 to 9500.1080 and the application supplied with the AFDC termination notice must be returned to the local agency within ten days of the date assistance ends.

Subp. 4. Social services. An AFDC unit staff member shall refer a recipient for social services that are offered in the county of financial responsibility according to the criteria which is established by that local agency under the Community Social Services Act. A payment issued from title XX, child welfare funds, or county funds in a payment month must not restrict program eligibility or reduce the monthly assistance payment for that recipient.

Subp. 5. Concurrent eligibility. A local agency shall not count an applicant or recipient as a member of more than one assistance unit in a given payment month except as provided in items A to C.

A. An applicant who receives assistance in a state other than Minnesota may be eligible in the first month of application at Minnesota payment standards. An assistance payment from another state must be considered unearned income when determining the assistance payment issued under the Minnesota program.

B. A recipient who is a member of an assistance unit in Minnesota is eligible to be included in a second assistance unit in the first full month that the recipient lives with a second assistance unit or from the date of application to include those persons, whichever is later. The assistance payment issued to and kept by the first assistance unit must be considered an overpayment and must be recouped or recovered from the first assistance unit.

C. An applicant who has his or her needs met through foster care under title IV-E for the first part of an application month is eligible to receive assistance for the remaining part of the month in which the applicant returns home. Title IV-E payments and assistance payments must be considered prorated payments rather than a duplication of AFDC need.

Subp. 6. Other income maintenance programs. An applicant or recipient is not eligible to receive general assistance medical care, general assistance, or Minnesota supplemental aid in the same payment month except for items A to C.

A. A general assistance recipient who applies for AFDC may be eligible for both assistance and general assistance in the months that the application for AFDC is pending. General assistance payment must be considered unearned income in determining

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AFDC eligibility. When a general assistance payment is issued to a battered women's shelter for an applicant or recipient, that payment must not be applied against AFDC need.

B. An applicant or recipient who is eligible for both AFDC and Minnesota supplemental aid may choose to receive benefits through either program.

C. An applicant who is receiving general assistance medical care at the time of application may continue to receive general assistance medical care until AFDC eligibility is established. Services received by applicants while they are eligible for both general assistance medical care and medical assistance must be paid under medical assistance.

9500.2880 COUNTY OF RESPONSIBILITY POLICIES AND DISPUTES.

Subpart 1. **Determining the county of financial responsibility.** The county of financial responsibility is the county in which a dependent child lives on the date the application is signed, unless subpart 4 applies. The county in which a woman with no children lives on the date the application is signed under part 9500.2140, subpart 4 is the county of financial responsibility unless subpart 4 applies. When more than one county is financially responsible for the members of an assistance unit, the caretaker's needs must be met by the county of financial responsibility for the most children. When each county is financially responsible for the same number of children, the county of financial responsibility for the oldest child is responsible for the needs of the caretaker.

Subp. 2. **Change in residence.** When a dependent child moves from one county to another and continues to receive assistance, the new county of residence becomes the county of financial responsibility when that child has lived in that county for two full calendar months, unless subpart 4 applies.

A. When a recipient moves from one county to another, eligibility for assistance is not affected unless eligibility factors are affected in the move. A local agency must not require a recipient to reestablish program eligibility as a new applicant for assistance solely because a recipient moves. A local agency shall not require reapplication nor apply the program eligibility criteria which govern only initial applications, except as described under item B, subitem (3).

B. The requirements in subitems (1) to (3) apply when a recipient moves from one county to another.

(1) When a recipient informs the local agency in the current county of residence of a planned move, the local agency in that county shall forward to the local agency in the county of planned residence the information from the case record which the county of planned residence needs to redetermine eligibility and to determine the amount of the assistance payment. Within 30 calendar days of the recipient's move, the new county of residence shall interview the recipient and take action to increase, reduce, suspend, or end assistance due to changes in the recipient's circumstances which affect either program eligibility or the amount of the assistance payment.

(2) When a recipient informs the new county of residence that he or she has entered the county as a current recipient, the new county shall obtain from the county from which the recipient moved the information from the case record that it needs to redetermine eligibility and determine the amount of the assistance payment. Within 30 calendar days, the local agency in the new county shall interview the recipient and take action to increase, reduce, suspend, or end assistance due to changes in the recipient's circumstances which affect either program eligibility or the amount of the assistance payment.

(3) When a recipient does not inform either county that the move has occurred before the mailing of the next assistance payment and when the whereabouts of a recipient are unknown, the county of financial responsibility shall end assistance. When a recipient reapplies in another county within 30 calendar days of termination and is eligible, assistance is considered to be uninterrupted for the determination of the county of financial responsibility for members of the assistance unit. This payment must be issued by the county of financial responsibility until the recipient has lived in the new county for two full calendar months.

C. When an applicant moves from one county to another while the application is pending, the county where application first occurred is the county of financial responsibility until the applicant has lived in the new county for two full calendar months, unless the applicant's move is covered under subpart 4.

Subp. 3. **Responsibility for incorrect assistance payments.** A county of residence, when different from the county of financial responsibility, will be charged by the commissioner for the value of incorrect assistance payments and medical assistance paid to or on behalf of a person who was not eligible to receive that amount. Incorrect payments include payments to an ineligible person or family resulting from decisions, failures to act, miscalculations, or overdue redeterminations of eligibility. However, financial responsibility does not accrue for a county when the redetermination of eligibility is overdue at the time the referral is received by the county of residence or when the county of financial responsibility does not act on the recommendation of the county of residence.

When federal or state law requires that medical assistance continue after assistance ends, the provisions of this subpart also govern financial responsibility for the extended medical assistance.

Subp. 4. **Out-of-county placement.** When a plan of treatment for health rehabilitation, foster care, child care or training, or a correctional plan requires that a recipient move from one county to another to meet the goals of the plan, the county in which the assistance unit lives at the time the plan is developed is the county of financial responsibility until the goals of the plan are met or until

the plan is ended. When the family or child continues to live in the second county, the former county is the county of financial responsibility until two full calendar months have elapsed following the completion or end of the plan. This delay in the transfer of financial responsibility to another county also applies when a woman leaves her county of residence to enter a battered women's shelter or a maternity shelter in another county. When an applicant or recipient had contact with a local agency staff member before moving, the contact must be evaluated to determine whether the move was a placement pursuant to a plan of treatment or whether the local agency had an existing legal obligation to consider and undertake such a placement.

Subp. 5. **Settlement of disputes.** When a local agency receives an application for assistance or a request for transfer under subpart 2 and does not believe it is the county of financial responsibility, items A to E apply.

A. The local agency that has received the application or transfer request shall, simultaneously:

(1) accept the application, determine program eligibility, and when the applicant or recipient is eligible, calculate and issue the assistance payment; and

(2) refer the current case record within 15 days to the county it believes to be the county of financial responsibility.

B. The local agency that is alleged to be the county of financial responsibility shall determine if it accepts financial responsibility, and, within 15 days of receipt of the current case record provided for under item A, the local agency shall:

(1) notify the referring county that it accepts financial responsibility; or

(2) notify the referring county that it does not accept financial responsibility and the reasons. The referring county shall then either accept financial responsibility or submit the matter to the commissioner for a settlement.

C. The commissioner shall provide both counties with the opportunity to state their positions, review the case facts, and determine from the case facts which county is the county of financial responsibility. The commissioner's determination binds both counties unless it is appealed to district court within 30 days of the date of the determination and the commissioner's decision is reversed by that court.

D. The county that accepts financial responsibility, or is determined by the commissioner to be the county of financial responsibility, shall reimburse the other county for costs the nonresponsible county previously paid. Reimbursement must be for the total costs incurred, rather than the county share, only when the nonresponsible county has not received AFDC federal and state reimbursement.

E. The provisions in this part must not be construed to require, authorize, or permit a local agency to delay either a determination of eligibility or issuance of an assistance payment when that local agency believes that another county may ultimately be financially responsible.

REPEALER. Minnesota Rules, parts 9500.0010; 9500.0020; 9500.0030; 9500.0040; 9500.0050; 9500.0060; 9500.0070; 9500.0080; 9500.0090; 9500.0100; 9500.0110; 9500.0120; 9500.0130; 9500.0140; 9500.0150; 9500.0160; 9500.0170; 9500.0180; 9500.0190; 9500.0200; 9500.0210; 9500.0220; 9500.0230; 9500.0240; 9500.0250; 9500.0260; 9500.0270; 9500.0280; 9500.0290; 9500.0300; 9500.0310; 9500.0320; 9500.0330; 9500.0340; 9500.0350; 9500.0360; 9500.0361; and 9500.0370 are repealed.

Department of Labor and Industry Occupational Safety and Health Division

Proposed Revision to the Occupational Safety and Health Standards

Request for Comments

Notice is hereby given that the Department of Labor and Industry, Occupational Safety and Health Division (Minnesota OSHA), proposes to adopt the following revision to the Minnesota Occupational Safety and Health Standards, as authorized under Minnesota Statutes § 182.655 (1984) amending the Occupational Safety and Health Standard that has already been proposed and adopted by the federal Occupational Safety and Health Administration (Federal OSHA).

Complete copies of the specific standard are available by writing: Occupational Safety and Health Division, Department of Labor and Industry, 444 Lafayette Road, St. Paul, Minnesota 55101; or by calling: (612) 297-3254.

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PROPOSED RULES

Interested persons are hereby afforded a period of 30 days to submit written data or comments on the described standards. Any interested person may file with the Commissioner written objections to the proposed standard stating the grounds for the objections; such person may request a public hearing on those objections.

Steve Keefe
Commissioner of Labor and Industry

Standards as proposed

5205.0010 ADOPTION OF FEDERAL OCCUPATIONAL SAFETY AND HEALTH STANDARDS BY REFERENCE. The Minnesota Department of Labor and Industry, Occupational Safety and Health standards and rules are amended by incorporating and adopting by reference, and thereby making a part thereof, Title 29 of the Code of Federal Regulations as follows:

Part 1910—Occupational Safety and Health Standards as published in Volume 43, No. 206 of the Federal Register on October 24, 1978 and corrected in Volume 43, No. 216 on November 7, 1978 which incorporates changes, additions, deletions, and corrections made up to November 7, 1978; and subsequent changes made prior to ~~November 4, 1985~~ March 1, 1986:

—Federal Register, Vol. 50, No. 240, dated December 13, 1985—“Occupational Exposure to Cotton Dust, 29 CFR 1910.1043.

Summary of Standard: The following summary of the proposed standard is very brief; persons interested in reviewing the entire standard may obtain a copy at the address noted above.

A) “Occupational Exposure to Cotton Dust, 29 CFR 1910.1043.” This final revised standard, published by Federal OSHA on December 13, 1985, revises 29 CFR 1910.1043 for the textile industry including incorporation of an action level; modification of exposure monitoring requirements; extension of compliance deadlines for ring spinning of coarse count yarn with a high cotton content; addition of a protocol for determining equivalency to the vertical elutriator; incorporation of a wage retention provision; exclusion of oil mist from the definition of cotton dust; clarification of coverage; and substantial changes to the washed cotton provisions to reflect current research. The permissible exposure limits (PELs) for yarn production and slashing and weaving operations as well as methods of compliance remain unchanged. In addition, Federal OSHA deregulated knitting, classing and warehousing operations by exempting them from all provisions of 29 CFR 1910.1043 and 1910.1000. Cotton seed processing operations are exempted from all requirements except medical surveillance; waste processing and garnetting operations are exempt from all requirements except the medical provisions and the respirable dust exposure limitations.

By this notice, Minnesota OSHA proposes to adopt the revised standard for Occupational Exposure to Cotton Dust, 29 CFR 1910.1043, as described in the Federal Register, Volume 50, Number 240, dated December 13, 1985.

ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 14.14-14.28 have been met and five working days after the rule is published in *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strikeouts and new language will be underlined. The rule's previous *State Register* publication will be cited.

An emergency rule becomes effective five working days after the approval of the Attorney General as specified in Minn. Stat. § 14.33 and upon the approval of the Revisor of Statutes as specified in § 14.36. Notice of approval by the Attorney General will be published as soon as practicable, and the adopted emergency rule will be published in the manner provided for adopted rules under § 14.18.

Department of Health

Adopted Rules Relating to Health Maintenance Organizations

The rules proposed and published at *State Register*, Volume 10, Number 23, pages 1234-1239, December 2, 1985 (10 S.R. 1234) are adopted with the following modifications:

Rules as Adopted

4685.0100 DEFINITIONS.

Subpart 1. to 9. [Unchanged.]

Subp. 9a. **NAIC Blank.** "NAIC Blank" means the 1985 version of the National Association of Insurance Commissioners' Blank for Health Maintenance Organizations (1985) published by the Brandon Insurance Service Company, Nashville, Tennessee. The NAIC Blank is incorporated by reference and is available for inspection at Ford Law Library, 117 University Avenue, Saint Paul, Minnesota 55155. ~~It is subject to change annually.~~ The NAIC Blank ~~includes the following sections:~~ is subject to annual changes by the publisher, but health maintenance organizations must use the 1985 version.

- ~~A. GENERAL INFORMATION, DEFINITIONS, AND INSTRUCTIONS;~~
- ~~B. STATEMENTS;~~
- ~~C. REPORTS;~~
- ~~D. GENERAL INTERROGATORIES;~~
- ~~E. SCHEDULES; AND~~
- ~~F. NOTES TO FINANCIAL STATEMENTS.~~

4685.2800 FEES.

Subpart 1. **Definitions.** For the purposes of this part, the terms defined herein shall have the meanings given to them:

A. "current fiscal year" means the year beginning the July 1 immediately preceding the April 1 filing date for annual reports; and

B. "previous fiscal year" means the fiscal year immediately preceding the current fiscal year.

Subp. 2. **Fee schedule.** Every filing submitted to the commissioner by a health maintenance organization subject to Minnesota Statutes, sections 62D.01 to 62D.29 (the Health Maintenance Act of 1973) shall be accompanied by the following fees:

A. for filing an application for a certificate of authority, \$1,500;

B. for filing the each annual report due by April 1, 1986, 2060 cents for each person enrolled in the health maintenance organization on December 31, 1985. For filing the annual report each year subsequent to 1986, \$50 an amount for each person enrolled in the health maintenance organization on December 31 of the current fiscal year. The amount must be based on:

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- (1) the allocation of the legislative appropriation for health maintenance organization accounts for the current fiscal year;
- (2) the Department of Health's general support costs and statewide indirect costs attributable to health maintenance organization regulation in the current fiscal year;
- (3) state attorney general costs attributable to the health maintenance organization function for the previous fiscal year;
- (4) receipts from filings for applications for certificates of authority, amendments to certificates of authority, and other filings in the previous fiscal year;
- (5) receipts from examinations conducted in the previous fiscal year; and
- (6) the projected enrollment in health maintenance organizations on December 31 of the current fiscal year. Projected enrollment will be based on total enrollment of Minnesota citizens in health maintenance organizations on December 31 of the previous fiscal year, plus the amount obtained by multiplying the average percent change in health maintenance organization enrollment for the three years immediately preceding the current fiscal year by the total enrollment of Minnesota citizens in health maintenance organizations on December 31 of the previous fiscal year.

The commissioner shall determine the amount to be paid per enrollee by subtracting the sum of the figures described by subitems (4) and (5) from the sum of the figures described by subitems (1), (2), and (3) and dividing the difference by the figure described by subitem (6). The commissioner shall publish the amount and the figures described by subitems (1) to (6) in the State Register by December 1 of the current fiscal year;

D. for each examination, the costs, including staff salaries and fringe benefits and indirect costs, incurred in preparing for and conducting the examination and preparing the subsequent report. The commissioner shall provide the health maintenance organization an itemized statement at the time of billing.

For the purpose of this item, indirect costs include costs attributable to:

- (1) supplies;
- (2) professional and technical services;
- (3) electronic data processing;
- (4) variable telephone usage;
- (5) correspondence delivery;
- (6) travel and subsistence; and
- (7) general overhead, including building rental, telephone systems, executive office services, personnel services, administrative services, and financial management.

The fee charged for the examination must be calculated by totalling staff salaries, fringe benefits, and the costs described in subitems (1) to (6) and adding the percentage of general overhead, described in subitem (7), attributable to the specific examination; and

4685.1930 NAIC BLANK FOR HEALTH MAINTENANCE ORGANIZATIONS, GENERAL INFORMATION, DEFINITIONS, AND INSTRUCTIONS.

Subp. 2. **Instructions for Report #2.** The instructions paragraph for Report #2: STATEMENT OF REVENUE AND EXPENSES in the GENERAL INFORMATION, DEFINITIONS, AND INSTRUCTION section is amended to require:

A. all revenue from the health maintenance organization's operations outside of Minnesota, and from business other than the operation of a health maintenance organization, conducted by the health maintenance organization, to be reported only under line 9, Other Revenue;

B. all nonadministrative expenses of these accounts to be reported only under line 19a, Other Expenses; and

C. all administrative expenses of these accounts to be reported only under line 25a, Additional Administrative Expenses; and

D. health maintenance organizations, beginning with the annual report filed in 1987, to report revenue and expenses in the line items described by the definitions as amended and printed on Report #2, as amended.

Subp. 5. **Reinsurance expenses.** The definition of Reinsurance Expenses as used on line 17 of Report #2: STATEMENT OF REVENUE AND EXPENSES is amended in the GENERAL INFORMATION, DEFINITIONS AND INSTRUCTIONS section to include, in addition, expenditures to insurance companies or nonprofit health service plan corporations engaged to fulfill obligations arising out of the health maintenance contract. These expenditures include premiums paid for indemnification against the risks incurred in providing nonelective emergency and out of area services and premiums paid for coverage which supplements the minimum coverage required of a health maintenance organization.

Subp. 6. Other expenses and additional revenues. GENERAL INFORMATION, DEFINITIONS, AND INSTRUCTIONS section for Report #2: STATEMENT OF REVENUES AND EXPENSES is amended by adding the following definitions:

4685.1940 NAIC BLANK FOR HEALTH MAINTENANCE ORGANIZATIONS, REPORT #2: STATEMENT OF REVENUE AND EXPENSES.

Subp. 2. **Other expenses.** Report #2: STATEMENT OF REVENUE AND EXPENSES is amended by adding line ~~18a~~ 19a, Other Expenses.

4685.1950 NAIC BLANK FOR HEALTH MAINTENANCE ORGANIZATIONS, REPORT #4: ENROLLMENT AND UTILIZATION TABLE.

Subp. 2. **Total members at end of period.** The Report #4: ENROLLMENT AND UTILIZATION TABLE is amended by requiring the itemization of Cumulative Member Months for Period by gender and five-year age increments, and Total Members at End of Period by gender, by five-year age increments, and by geographic area, for the health maintenance organization's Minnesota health maintenance contract enrollment and each demonstration project.

Subp. 3. **Type of service.** Report #4: ENROLLMENT AND UTILIZATION TABLE is amended by requiring the itemization of ~~Cumulative Member Months for Period,~~ Total Patient Days Incurred, Annualized Hospital Days per 1,000 Enrollees, and Average Length of Stay by five-year age increments and by the following types of service for Minnesota health maintenance contracts and each demonstration project:

Housing Finance Agency

Adopted Rules Relating to Shared Housing Program

The rules proposed and published at *State Register*, Volume 10, Number 28, pages 1497-1499, January 6, 1986 (10 S.R. 1497) are adopted as proposed.

Racing Commission

Adopted Rules Governing Horse Racing

The rules proposed and published at *State Register*, Volume 10, Number 33, pages 1672-1686, February 10, 1986 (10 S.R. 1672) are adopted with the following modifications:

Rules as Adopted

7875.0200 EQUIPMENT.

Subp. 9. **External communications.** An association may have telephone or telegraph systems on the premises during a race meeting for the benefit of the public press or for transacting ordinary business, but no information regarding the results of any race shall be transmitted out of the racetrack until 15 minutes after the results are official; ~~nor~~ except for races that are broadcast or televised live. For those races the results and payoffs may be announced as soon as the race is official. Under no circumstances shall any message be sent over said wires transmitting money, or other things of value, or directing the placing of any wager on the result of a race except as permitted by part 7873.0400.

7895.0125 THOROUGHBRED REGISTRATION.

Subpart 1. **Broodmare registration.** To be eligible to receive any breeders' award payments, the following requirements must be met:

A. Prior to foaling, a broodmare must be in Minnesota and registered or the registration renewed with the racing commission or official registering agency on or before January 31 of the year in which the broodmare will foal. The broodmare's original jockey club certificate must ~~accompany the registration application~~ be received by the racing commission or official registering agency.

Subp. 2. **Stallion registration.** To be eligible to receive any stallion award payments, the following requirements must be met:

A. Stallions must be in Minnesota and registered or the registration renewed with the racing commission or official regis-

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

ADOPTED RULES

tering agency by February 1 of the current breeding year. The stallion's original jockey club certificate must ~~accompany the registration application~~ be received by the racing commission or official registering agency. If the stallion is leased, a copy of the lease must accompany the registration application. The lease must include a statement that the lessee is authorized to sign the breeding certificate.

7895.0275 STANDARD BRED REGISTRATION.

Subpart 1. **Stallion registration.** To be eligible to participate in the standardbred breeders' fund program, the following requirements must be met:

A. Stallions must be in Minnesota and registered or the registration renewed with the racing commission or official registering agency by January 1 of the current breeding year. The stallion's original United States Trotting Association (USTA) certificate must ~~accompany the initial registration application~~ be received by the racing commission or official registering agency. If the stallion is leased, a copy of the lease must accompany the registration application or renewal. The lease agreement must contain a statement that the lessee is authorized to sign the breeding certificate.

7895.0350 QUARTER HORSE REGISTRATION.

Subpart 1. **Broodmare registration.** To be eligible to receive any breeders' award payments, the following requirements must be met:

A. Prior to foaling, a broodmare must in Minnesota and registered or the registration renewed with the racing commission or official registering agency on or before January 31 of the year in which the broodmare will foal. The broodmare's original American Quarter Horse Association (AQHA) certificate must ~~accompany the initial registration application~~ be received by the racing commission or official registering agency.

Subp. 2. **Stallion registration.** To be eligible to receive any stallion award payments, the following requirements must be met:

A. Stallions must in Minnesota and registered or the initial registration renewed with the racing commission or official registering agency by February 1 of the current breeding year. The stallion's original American Quarter Horse Association (AQHA) certificate must ~~accompany the initial registration application~~ be received by the racing commission or official registering agency. If the stallion is leased, a copy of the lease must accompany the registration application. The lease must include a statement that the lessee is authorized to sign the breeding certificate.

OFFICIAL NOTICES

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

McLeod County

Notice of Filing Fees for County Law Library

Effective May 1, 1986, a law library fee, not to exceed \$10.00, may be assessed on criminal convictions pursuant to Minnesota Statutes 140.422 subdivision 3. The exact fee per offense shall be established by court order. All other library fees remain as previously established.

Pollution Control Agency Solid and Hazardous Waste Division

Notice of Meetings of Midwest Interstate Low-Level Radioactive Waste Commission (MILLRWC) and Committees

The MILLRWC committees will meet consecutively beginning at 9:30 a.m., April 30, 1986. The Commission will meet at 9:00 a.m., May 1, 1986. All meetings are at the Holiday Inn Town Square, 411 Minnesota Street, St. Paul, Minnesota. For further information, call the MILLRWC office, (612) 293-0126.

Pollution Control Agency Solid and Hazardous Waste Division/Water Quality Division

Outside Opinion Sought Regarding Development of Rules for Underground Storage Tank (UST) Management and Possible Amendment of Rules for Above Ground Storage Tank Management

Notice is hereby given that the Minnesota Pollution Control Agency (MPCA) is seeking information or opinions from sources outside the MPCA for the purpose of adopting rules applicable to all owners and operators of USTs in the state, pursuant to Minnesota Laws, 1985 First Special Session, Chapter 13, Sections 235 to 239 and codified as Minnesota Statutes, Sections 116.46 to 116.50 (Supp. 1985).

The legislation mandates the establishment of safeguards necessary to protect human health and the environment. The rules may include but are not limited to the following areas: notification of the existence of USTs; UST installation; monitoring requirements; protection against corrosion; UST piping requirements; compatibility with substance stored; leak detection; UST testing; leak and spill reporting; and, financial assurance requirements for UST owners.

The MPCA invites all interested persons or groups to submit information or comments on these subjects to the following staff:

Roger W. Stead 612/296-7336
Thomas P. Clark 612/296-7335

Further, MPCA is seeking information or opinions from sources outside the MPCA regarding possible amendments of existing rules for above ground storage of oil and other liquid substances (Minnesota Rules, Parts 7100.0010 to 7100.0090). Comments regarding how MPCA should interface rules for underground and above ground storage are also encouraged. Interested persons or groups should submit information or comments on above ground storage to the following staff:

Lawrence T. Johnson 612/296-7366

Written comments for both types of storage may be sent to:

Minnesota Pollution Control Agency
Solid and Hazardous Waste Division
Underground Storage Tank Program
Attn: John N. Holck
1935 West County Road B2
Roseville, Minnesota 55113

Any written material received by the MPCA by May 23, 1986 shall become part of the background record regarding these rules.
April 2, 1986

Thomas J. Kalitowski
Executive Director

State Retirement System

Board of Directors Regular Meeting

A meeting of the Board of Directors, Minnesota State Retirement System, will be held on Friday, April 18, 1986 at 8:30 a.m. in the office of the System, 529 Jackson Street, St. Paul, Minnesota.

Teachers Retirement Association

Meeting Notice

The Board of Trustees, Minnesota Teachers Retirement Association will hold a meeting on Wednesday, April 23, 1986, at 1:30 p.m. in Room 302 Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota to consider matters which may properly come before the Board.

OFFICIAL NOTICES

Department of Transportation

Petition of the City of Spring Lake Park for a Variance from Minnesota Rules for State Aid Operations

Notice is hereby given that the City Council of the City of Spring Lake Park has made a written request to the Commissioner of Transportation pursuant to Minnesota Rules § 8820.3300.

The request is for a variance from Minnesota Rules for State Aid Operations § 8820.1400, Subpart 3 so as to permit the City of Spring Lake Park to request maintenance monies greater than the established minimum for the Calendar Year 1986 even though the date for such a request is no later than December 15, 1985.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held in the request.

4 April 1986

Richard P. Braun
Commissioner of Transportation

STATE CONTRACTS

Pursuant to the provisions of Minn. Stat. § 16.098, subd. 3, an agency must make reasonable effort to publicize the availability of any consultant services contract or professional and technical services contract which has an estimated cost of over \$2,000.

Department of Administration procedures require that notice of any consultant services contract or professional and technical services contract which has an estimated cost of over \$10,000 be printed in the *State Register*. These procedures also require that the following information be included in the notice: name of contact person, agency name and address, description of project and tasks, cost estimate, and final submission date of completed contract proposal. Certain quasi-state agencies are exempted from some of the provisions of this statute.

Commodities contracts with an estimated value of \$5,000 or more are listed under the Procurement Division, Department of Administration. All bids are open for 7-10 days before bidding deadline. For bid specifics, time lines, and other general information, contact the appropriate buyers by calling 296-6152. If the appropriate buyer is not available, contact Harvey Leach or Barbara Jolly at 296-3779.

Department of Administration Procurement Division

Commodities Contracts Currently Open for Bidding

Call 296-2513 for referral to specific buyers.

Commodity for Bid	Bid Opening Date	Department or Division	Delivery Point	Requisition #
Used Truck	April 14, 1986	Natural Resources	New Ulm	29-004-07328
Computer Tables—Rebid	April 14, 1986	Human Services	To be determined	55-000-93782
Uniform Fabric	April 14, 1986	Natural Resources	Grand Rapids	29-000-43313
Teaching Robot	April 14, 1986	Rochester Community College	Rochester	27-148-48131
Lumber	April 14, 1986	Transportation	St. Paul	79-500-03010
Industrial Tractor	April 14, 1986	Rochester Community College	Rochester	27-148-48129
Paving Stone	April 14, 1986	St. Cloud State University	St. Cloud	26-073-18744
Furnish & Install Gymnasium Equip.	April 14, 1986	Correctional Facility	Shakopee	02-310-14548
Office Info. Memo	April 14, 1986	Administration Central Services	St. Paul	Rebid 02-511-47362-6738
Microfilm Camera Retrieval System	April 15, 1986	Mankato State University	Mankato	26-071-16513

STATE CONTRACTS

Commodity for Bid	Bid Opening Date	Department or Division	Delivery Point	Requisition #
Bar Soap	April 15, 1986	Various	Various	Price-Contract
Misc. Furnishings	April 15, 1986	IRIC Amphitheatre	Chisholm	43-000-06424
Speciality Gases	April 15, 1986	Various	Various	Price-Contract
Fertilizer	April 15, 1986	Natural Resources	Watson, Mn.	29-004-07318
Genuine Repair Parts for Ford Mower, Tractors, and Loaders Addendum #1	April 15, 1986	Various	Various	Price-Contract
AVTI Program Poster	April 15, 1986	Vocational Education	St. Paul	36-000-04921-6353
Tape Cartridges Rebid	April 15, 1986	Administration-Information Management	St. Paul	02-410-48178
Supply & Install Lamp Fixtures	April 16, 1986	Anoka-Ramsey Community College	Anoka-Ramsey Community College	27-000-46265
Airfield Runway Paint	April 16, 1986	Transportation-Aeronautics	St. Paul-Holman Field	79-000-52474
Pump Repair	April 16, 1986	Human Services Regional Treatment Center	Faribault	55-303-11147
Riprap Goodhue County	April 18, 1986	Natural Resources	Southern Svc. Ctr.	29-005-08744
Remove Curb, Street & Sidewalk Addendum #1—Fabrication of Draperies, Bedspreads, & Cubicle Curtains	April 18, 1986	St. Cloud State University	St. Cloud	26-073-18765
Std. Commercial Grade Ammonia (Photography use only)	April 18, 1986	Correctional Facility	Shakopee	02-310-14544
Purchase of Apple Computer System	April 18, 1986	Various	Various	Price-Contract
Purchase of Computer Software	April 18, 1986	Human Services	St. Paul	80-100-03343
Genuine Repair Parts for Case Ind. Tractors, Loaders, crawlers and other Equip.	April 18, 1986	Public Service	St. Paul	80-100-03344
Riprap—Winona County	April 18, 1986	Various	Various	Price-Contract
Purchase of Platter	April 21, 1986	Natural Resources	Southern Svc. Ctr.	29-005-08737
Aeronautic Equip.	April 21, 1986	Transportation	Rochester, Mankato	79-000-52320
Replacement Parts for Open Reel Tape Recorder	April 21, 1986	Transportation	St. Paul	79-000-52547
Purchase of Terminals & Printer Certificate of Real Estate Value	April 21, 1986	Jobs & Training	St. Paul	21-700-12319
Uninterruptible Power Supply System	April 21, 1986	State Planning Agency	St. Paul	30-000-15581
Decals & Signs	April 21, 1986	Revenue	St. Paul	67-330-11377-7351
		Natural Resources	St. Paul	29-000-43713
		Iron Range Resources and Rehabilitation Board	Calumet	43-000-06909

Call 296-2513 for referral to specific buyers.

Department of Corrections Red Wing Correctional Facility

Notice of Availability of Contract for Dietetic Services

The program at the Minnesota Correctional Facility—Red Wing requires the services of a licensed dietician. This person will provide professional dietetic consultation, enabling dietetic staff to provide hygienic dietetic services that meet the daily nutritional needs of residents, ensures that special dietary needs are met, and provides palatable, attractive and acceptable meals. The consultant will provide a minimum of 12 hours per month of professional services. Annual cost is limited to \$3,000.00

**Department of Corrections
Red Wing Correctional Facility**

Notice of Availability of Contract for Catholic Chaplain

The program at the Minnesota Correctional Facility—Red Wing requires the services of an ordained Catholic priest from 7/1/86 to 6/30/87. This person will provide weekly Mass and spiritual guidance and counseling for the Catholic students at MCF—Red Wing as requested. This person will provide up to 20 hours per week for 50 weeks at \$10.50 per hour. Annual cost is limited to \$10,500.00.

For further information on these contracts, contact:

Thomas P. Kernan, Assistant Superintendent
Minnesota Correctional Facility—Red Wing
Box 45
Red Wing, Minnesota 55066
Telephone: (612) 388-7154

Final submission date for this contract is: May 15, 1986.

**Department of Corrections
Red Wing Correctional Facility**

Notice of Availability of Contract for Medical Clinic Services

The program at the Minnesota Correctional Facility—Red Wing requires the services of a medical clinic. This clinic will provide all clinic services as ordered by the medical staff at MCF—Red Wing. Annual cost is limited to \$9,500.00.

**Department of Corrections
Red Wing Correctional Facility**

Notice of Availability of Contract for Psychological Evaluation Services

The program at the Minnesota Correctional Facility—Red Wing requires the services of a licensed psychologist. This person will provide the written psychological evaluation—through testing, interviews, etc., on up to a twice weekly basis for all new admissions to the institution, to re-test selected youths based upon specific staff referral, plus limited staff training in the area of his/her expertise. Payment is \$269.47 per 8-hour day. Annual cost is limited to \$25,600.00.

**Department of Corrections
Red Wing Correctional Facility**

Notice of Availability of Contract for Volunteer Services Coordinator

The program at the Minnesota Correctional Facility—Red Wing requires the services of a volunteer coordinator. Position requires up to 50 hours per week. Responsibilities include the providing of professional volunteer services for juvenile clients at the institution through the recruiting and training of volunteers, plus the development of a coordinated scheduling of the volunteers, plus the development of a coordinated scheduling of the volunteers to augment the on-going programs. Payment is \$2,055.00 per month. Annual cost is limited to \$24,660.00.

Department of Corrections Red Wing Correctional Facility

Notice of Availability of Contract for Certified Driver Education Instructor Services

The program at the Minnesota Correctional Facility requires the services of a certified driver education instructor. This position requires up to 60 hours per month of instruction. Responsibilities include classroom and behind-the-wheel instruction, testing and record keeping. The instructor shall provide a safety certified driver education car. The instructor would also be required to provide special instruction to students on a special need basis. Hours of instruction will be coordinated with general school schedules. Payment is \$10.00/hour. Annual cost would be limited to \$7,200.00.

For further information on this contract, contact:

John Odden, Director of Education
Minnesota Correctional Facility—Red Wing
Box 45
Red Wing, Minnesota 55066
Telephone: (612) 388-7154

Final submission date for this contract is May 15, 1986.

Department of Corrections Oak Park Heights Correctional Facility

Notice of Request for Proposals for Providing Food Services

Notice is hereby given that the Minnesota Correctional Facility—Oak Park Heights, is requesting proposals for the professional management of our Food Service activity for the period of July 1, 1986 through June 30, 1987. The estimated cost will not exceed \$186,400 for the contract period. This proposal shall include all civilian personnel to operate the service. The proposals must be submitted by 4:30 p.m., May 23, 1986, to: Dennis Benson, Associate Warden of Administration. Please contact Mr. Benson at (612) 779-1461, if interested.

Department of Human Services Brainerd Regional Human Service Center

Request for Proposal for Medical Services and Behavior Modification Services

Notice is hereby given that the Brainerd Regional Human Service Center, Mental Health Bureau, Department of Human Services, is seeking the following services for the period July 1, 1986 through June 30, 1987. These services are to be performed as requested by the Administration of the Brainerd Regional Human Service Center.

This request for proposals does not obligate the state to complete the projects, and the state reserves the right to cancel the solicitation if it is considered to be in its best interest.

1. Services of a physician to provide "on call" service for an acute ward, physical examinations, make hospital rounds, and conduct clinics. The estimated amount of the contract will not exceed \$48,000.00.

2. Services of a radiologist to interpret X-rays taken at Brainerd Regional Human Service Center or special X-rays done under his/her direction at St. Joseph's Medical Center, Brainerd, MN. The estimated amount of the contract will not exceed \$18,000.00.

Provide objective technical review of aversive treatment programs, and research proposals submitted to the Research Committee for approval. Attend monthly Research Committee meetings and participate in decisions of the Committee. Provide technical assistance in improvement of individual treatment programs submitted to the Research Committee. The estimated amount of the contract will not exceed \$8,000.00.

STATE CONTRACTS

Responses must be received by 11 a.m., May 12, 1986. Direct inquiries to:

Elmer O. Davis
Assistant Administrator (218) 828-2399
Brainerd Regional Human Service Center
1777 Highway 18 East
Brainerd, MN 56401

For publication Monday, April 21, 1986.

Department of Human Services St. Peter Regional Treatment Center

Request for Proposal for Medical Services

Notice is hereby given that the St. Peter Regional Treatment Center, Residential Facilities Administration, Department of Human Services, is seeking the services which are to be performed as requested by the Administration of the St. Peter Regional Treatment Center. The following contracts will be written for the period July 1, 1986 thru June 30, 1987.

1. Services of a radiologist to provide, study, interpretation and dictate findings of x-ray films. Estimated amount of the contract will not exceed \$13,500.00.
2. Service of an individual certified in the art of signing, to serve the needs of the hearing impaired. Estimated amount of the contract will not exceed \$33,660.00.
3. Services of a psychiatrist to examine and evaluate persons referred to the Intensive Treatment Program for Sexual Aggressives. The estimated amount of the contract will not exceed \$35,100.00.

Responses must be received by May 5, 1986. Direct inquiries to:

Tom Bolstad
St. Peter Regional Treatment Center
100 Freeman Drive
St. Peter, MN 56082
Phone: 507 931 7116

Department of Jobs and Training

Request for Proposal for Graphics Arts Services

The Department of Jobs and Training is requesting proposals for bids to provide a variety of graphic arts services beginning in July, 1986. This contract will cover such tasks as concept development, graphic design and layout, special typesetting, and illustration for a variety of the department's publications. Respondents will be asked to provide a portfolio, staff qualifications and a fee schedule which will be effective during the life of the contract. The successful respondent will be assigned tasks within the scope of the contract as needed by the Department. Total amount of the Contract will not exceed \$15,000.

For more information and a complete copy of the request for proposal, contact:

Department of Jobs and Training
390 North Robert Street
St. Paul, Minnesota 55101
(612) 296-2369

Proposals will be accepted until June 2, 1986.

SUPREME COURT CALENDAR

Listed below are the cases scheduled to be heard by the Minnesota Supreme Court in the next few weeks. This listing has been compiled by the Minnesota State Law Library for informational purposes only. Cases may be rescheduled by the Court subsequent to publication in the *State Register*. Questions concerning dates, locations, cases, etc., should be directed to: Clerk of the Appellate Courts, Room 230 State Capitol, St. Paul, MN 55155 612-296-2581.

MAY 1986

Thursday, 05-01-86

85-828 STATE OF MINNESOTA (Attorney: DeCoster, Steven C.) vs. KIM, JOON KYU (Attorney: Thomson & Hawkins and Deborah Ellis) 9:30 a.m. Room 326, Landmark Center, St. Paul. ORIGIN: Court of Appeals.

Whether statistical probability evidence that tends to quantify and undermine the reasonable doubt standard is properly admitted in criminal cases and *State v. Boyd* should be overruled.

Whether the prosecution's case is critically impacted by the suppression of statistical and numerical testimony regarding population frequencies of the blood enzyme types found in the semen stains.

Whether the critical impact standard is a workable, fair standard for state pretrial appeals or should *State v. Webber* be overruled. [Issues as in brief of Respondent, Kim]

Monday, 05-05-86

85-2105 JACOBSEN, EARL D., ET AL (Attorney: Fryberger, Buchanan, et al, and David R. Oberstar) vs. ANHEUSER-BUSCH, INC. (Attorney: Halverson, Watters, et al, and Steven W. Schneider) 9:00 a.m. State Capitol, St. Paul. ORIGIN: Certification & Request, Court of Appeals.

Does the Minnesota Beer Brewers and Wholesalers Act, Minn. Stat. 325B.01, et seq., applied retroactively to a preexisting agreement between a brewer and a wholesaler, as expressly mandated by Minn. Stat. 325B.15, unconstitutionally impair the contractual expectations of the parties created by that preexisting agreement, as prohibited by the Contracts Clauses of the United States and Minnesota Constitutions?

85-554 ANDRADE, JOHN, ETC. (Attorney: Lawson, F. Dean, and John F. Laue) vs. ELLEFSON, ELIZABETH, ET AL (Attorney: Johnson, Robert M. A., Anoka County Attorney) 9:00 a.m. State Capitol, St. Paul. ORIGIN: Court of Appeals.

By making mandated recommendations to the State in the area of day-care licensing, did Anoka County assume a private or special duty of care to children receiving day care in a private home licensed by the State?

Did the Court of Appeals properly grant summary judgment sua sponte in favor of Respondents?

Can the proximate cause of Respondents' injuries be determined on a motion for summary judgment?

Is Anoka County an employee of the State of Minnesota in the area of day-care licensing?

Should Anoka County be denied immunity as an agent of the State because the State, as the County's principal, did not authorize the County's tortious conduct?

By procuring liability insurance, is Anoka County precluded by Minn. Stat. 3.736, subd. 8, from asserting its defenses?

Should Anoka County's motion for summary judgment be denied because there are genuine issues of material fact? [Issues as in brief of Respondent, Andrade]

Monday, 05-05-86

84-2223 FALLON, PATRICK, J., IN THE MATTER OF THE APPLICATION FOR THE DISCIPLINE OF (Attorney: Wernz, William J., Dir. Lawyers Prof'l Responsibility) (Opposing Counsel: Fallon, Patrick J.) 9:00 a.m. State Capitol, St. Paul. ORIGIN: Order to Show Cause.

Tuesday, 05-06-86

85-821 and 85-957 J. L. MANTA, INC. (Attorney: Hessian, McKasy & Soderberg and Mark R. Miller) vs. Braun, RICHARD P., COMM'R OF TRANSPORTATION FOR THE STATE OF MINNESOTA (Attorney: Mueting, Donald J., Special Ass't Attorney General) 9:00 a.m. State Capitol, St. Paul. ORIGIN: Court of Appeals.

Were the District Court and Court of Appeals correct in enjoining the Commissioners of Transportation and Administration, in the absence of substantial legal reasons, from rejecting all bids and beginning the bidding process anew?

85-1136 TURNER, AMERLIA M., IN RE ESTATE OF (Attorney: Daly, Dennis D.) (Opposing Counsel: Fortney, David, Ass't Ramsey County Attorney) 9:00 a.m. State Capitol, St. Paul. ORIGIN: Court of Appeals.

SUPREME COURT CALENDAR

Does Minn. Stat. 256B.15 deny equal protection of the law to medical assistance recipients over age 65 by requiring the filing of a claim against their estates for the total amount of medical assistance paid to them after the age of 65 when section 256B.15 does not contain a similar recoupment requirement for medical assistance to recipients under the age of 65?

Wednesday, 05-07-86

85-906 STATE OF MINNESOTA (Attorney: MacGibbon, John, Sherburne County Attorney) vs. JONES, LEMOYNE PETER (Attorney: Cromett, Michael F.) 9:00 a.m. State Capitol, St. Paul. ORIGIN: Judgment Sherburne County.

Did the agreement between the state and key witnesses against appellant, admitted perpetrators of the crime, irreparably taint their testimony because contingent upon the success of the conviction of appellant and thereby deprive appellant of his state and federal constitutionally guaranteed rights to fundamental fairness and due process of law?

Did the trial court erroneously admit evidence of other crimes when appellant cross-examined witnesses about favorable treatment they received for testifying against him and where the evidence of other crimes was unnecessary and its prejudicial effect outweighed its probative value?

Was appellant denied his federal and state constitutional rights to a speedy trial by delay of over seven months between the filing of the complaint/arrest, demand, and trial? [Issues as in brief of Appellant, Jones]

84-2062 HUGHES, DONALD E., ET AL (Attorney: Luther & Ballenthin and Alan L. Dworsky) vs. SINCLAIR MARKETING, INC., F.K.A. PASCO, INC. (Attorney: O'Connor & Hannan and Joe E. Walters) 9:00 a.m. State Capitol, St. Paul. ORIGIN: Court of Appeals.

Whether Sinclair can be held liable under the Minnesota Franchise Act for misrepresentation when the alleged misrepresentation is unsupported by the evidence and related solely to a mere statement of intent.

Can Sinclair, as a matter of law, be liable under the Franchise Act for improper nonrenewal when its underlying lease to the gas station had expired?

Did the Court of Appeals improperly disregard existing Minnesota precedent (which had established out-of-pocket losses as the measure of damages for misrepresentation) and create new law awarding lost future profits as damages for misrepresentation under the Franchise Act?

Is injunctive relief the exclusive remedy under the Franchise Act for nonrenewal of a franchise? [Issues as stated in brief of Appellant, Sinclair]

86-272 MOORE, HOWARD J., IN THE MATTER OF THE APPLICATION FOR THE DISCIPLINE OF (Attorney: Wernz, William J., Dir. Lawyers Prof'l Responsibility) (Opposing Counsel: Moore, Howard J.) 9:00 a.m. State Capitol, St. Paul. ORIGIN: Petition for Disciplinary Action.

Monday, 05-12-86

85-805 WHITE BEAR ROD AND GUN CLUB (Attorney: Popham, Haik, et al, and Thomas J. Barrett) vs. HUGO, CITY OF (Attorney: Johnson, Charles A., Hugo City Attorney) 9:00 a.m. State Capitol, St. Paul. ORIGIN: Court of Appeals.

Whether on the certified record, denial of the Petitioner's request for a reasonable decibel limit on the operation of its Gun Club was reasonable and supported by the evidence, as required by the law and Constitution of Minnesota and the Constitution of the United States.

85-872 ILLINOIS FARMERS INSURANCE COMPANY (Attorney: Rider, Bennett, et al, and Eric J. Magnuson) vs. WRIGHT, OLIVER B. (Attorney: Gislason, Martin & Varpness and Marlene R. Tschida) 9:00 a.m. State Capitol, St. Paul. ORIGIN: Court of Appeals.

In an uninsured motorist carrier's subrogation action against a third party tortfeasor, is the third party tortfeasor precluded from litigating the issue of damages merely because of a settlement which he made with the injured party?

Tuesday, 05-13-86

85-636 CLEMENS, DOUGLAS DEAN (Attorney: Spicer, Watson & Carp and Tanya M. Bransford) vs. WILCOX, TROY, ET AL (Attorney: Larkin, Hoffman, et al, and David G. Moeller) 9:00 a.m. State Capitol, St. Paul. ORIGIN: Court of Appeals.

Were the acts of Douglas Clemens arguably within the language of the insured's insurance policy establishing a duty to defend Clemens?

Did the jury appropriately find that the insured intended to do the acts but did not intend the resulting injury to occur?

Did Respondent, Wilcox, have a duty to prove her injuries at the Plaintiff's declaratory judgment trial? [Issues as in brief of Respondent, Wilcox]

85-833 LAURA BAKER SCHOOL ASS'N, IN THE MATTER OF THE CONTESTED CASE OF (Attorney: Gray, Plant, et al, and Curtis D. Forslund) vs. DEPARTMENT OF HUMAN SERVICES (Attorney: Huskins, Deborah L., Special Ass't Attorney General) 9:00 a.m. State Capitol, St. Paul. ORIGIN: Court of Appeals.

Was the Laura Baker School Association required to obtain a determination of need from the Minnesota Department of Human Services before applying to the Department of Health for certification to obtain medical assistance funding?

Does the legislative moratorium in Minn. Stat. 252.291, subd. 1, preclude certification of the school?

Does the Commissioner of the Department of Human Services have authority to deny a need determination even without the statutory moratorium? [Issues as in brief of Appellant Association]

SUPREME COURT DECISIONS

Decisions Filed Friday, April 4, 1986

Compiled by Wayne O. Tschimperle, Clerk

C6-85-443 World Wide Tracers, Inc., petitioner, Appellant v. Metropolitan Protection, Inc., formerly Protection Technologies, Inc., and Metropolitan State Bank, and John Hole, et al. Court of Appeals.

Although in general broad descriptions of collateral in security agreements and financing statements are sufficient to perfect security interests, the description "any property of the debtor acquired after July 15, 1980," when read in conjunction with an attached list of collateral containing only tangible assets, is not sufficient to perfect a security interest in debtor's accounts receivable.

Affirmed. Amdahl, C.J.

C4-85-912 State of Minnesota v. Jay Norregaard, petitioner, Appellant. Court of Appeals.

Offenses of aggravated robbery and assault in the third degree were committed as part of a single behavioral incident and therefore under Minn. Stat. § 609.035 (1984) the trial court could properly sentence defendant for only one of the two offenses.

Affirmed as modified. Amdahl, C.J.

C7-84-1347 State of Minnesota, petitioner, Appellant v. Kurt Dean Doughman. Court of Appeals.

The trial court erred in allowing the admission of *Spreigl* evidence where the fact that a prior crime or bad act had occurred was in doubt.

Affirmed. Scott, J.

C8-84-692 Jostens, Inc., petitioner, Appellant v. Mission Insurance Company and Employers Insurance of Wausau, petitioner, Appellant. Court of Appeals.

The plaintiff insured remains a real party in interest, notwithstanding having entered into a loan receipt agreement.

When both the underlying and umbrella carriers have a duty to defend because each arguably has primary coverage for asserted claims, and the insured undertakes its own defense, the insured may subsequently recover its defense costs from either or both insurers, but, as between the two insurers, liability for the defense costs may be apportioned.

The trial court did not err in requiring the underlying carrier and the umbrella carrier, each of which arguably had some primary coverage, to share equally the costs of the insured in bringing this action to establish their duties to defend.

Affirmed in part, reversed in part, and remanded. Simonett, J.

C3-84-1359 Theodore G. Hunt v. IBM Mid America Employees Federal Credit Union and Board of Directors of IBM Mid America Employees Federal Credit Union, petitioner, Appellant. Court of Appeals.

Termination provisions in an employee handbook were insufficiently definite to meet legal requirements for the formation of a unilateral contract circumscribing the employer's right to terminate an at-will employment contract.

Under the facts and circumstances, there existed no implied covenant to discharge only in good faith.

Reversed and remanded. Kelley, J.

TAX COURT

Pursuant to Minn. Stat. § 271.06, subd. 1, an appeal to the tax court may be taken from any official order of the Commissioner of Revenue regarding any tax, fee or assessment, or any matter concerning the tax laws listed in § 271.01, subd. 5, by an interested or affected person, by any political subdivision of the state, by the Attorney General in behalf of the state, or by any resident taxpayer of the state in behalf of the state in case the Attorney General, upon request, shall refuse to appeal. Decisions of the tax court are printed in the *State Register*, except in the case of appeals dealing with property valuation, assessment, or taxation for property tax purposes.

State of Minnesota Tax Court Regular Division

**Margaret Gottlieb, as Personal Representative of the Estate of Edna G. Syreen,
Appellant, vs. Commissioner of Revenue, Appellee.**

Findings of Fact, Conclusions of Law and Order for Judgment

The Minnesota Tax Court, Chief Judge Carl A. Jensen presiding, tried the above matter on January 14, 1986 at the Crow Wing County Courthouse in Brainerd, Minnesota.

Thomas J. Ryan, Attorney with Ryan, Ryan, Ruttger and Drake, appeared on behalf of appellant.

James W. Neher, Special Assistant Attorney General, appeared on behalf of appellee.

SYLLABUS

Minnesota Statutes § 291.131, subd. 2, requires the imposition of a penalty for failing to file an estate tax return within the time prescribed, "unless it is shown that such failure is due to reasonable cause." The executor has the duty of filing within the prescribed time and this duty cannot be delegated so as to relieve the executor of the stated penalties.

FINDINGS OF FACT

1. On September 13, 1983, Edna G. Syreen died. In accordance with the provisions of her will, her daughter, Margaret Gottlieb, was appointed representative of her estate.

2. Within one to two months following her mother's death, Margaret Gottlieb retained Gilbert J. Caron, a licensed public accountant, to prepare various tax returns for the estate, including the Minnesota estate tax return ("the return").

3. At no time was there any discussion between Margaret Gottlieb and Gilbert J. Caron concerning the due date for filing the return.

4. On February 20, 1984, Gilbert J. Caron underwent bypass heart surgery, and returned to work on a limited basis in July, 1984.

5. The return was due on June 13, 1984, nine months following the decedent's death. It was filed on October 3, 1984, and tax and interest in the amount of \$85,359.00 was paid on December 3, 1984.

6. On December 7, 1984, the Commissioner issued his Order denying appellant's request for abatement of a 25% late filing penalty in the amount of \$20,033.50 plus interest, and appellant has timely appealed from that Order.

7. Minn. Stat. § 291.09, subd. 7 (1984), provides:

The estate tax return, except as otherwise provided in this chapter, shall be filed with the commissioner within nine months after the decedent's death.

Minn. Stat. § 291.131, subd. 2 (1984), provides:

In case of any failure to make and file a return within the time prescribed or an extension thereof, unless it is shown that such failure is due to reasonable cause, a penalty of ten percent shall be added to the tax if the failure is for not more than 30 days with an additional five percent for each additional 30 days or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate. This penalty shall be in lieu of the penalty provided in subdivision 1 [late payment penalty].

8. The facts in this case do not constitute reasonable cause for avoidance of the penalty under the terms of the statutes.

CONCLUSIONS OF LAW

1. Appellant has not demonstrated "reasonable cause" for the late filing of the estate tax return within the meaning of Minn. Stat. § 291.131, subd. 2 (1984).

2. The Commissioner's Order denying appellant's request for abatement of the late filing penalty, dated December 7, 1984, is affirmed.

LET JUDGMENT BE ENTERED ACCORDINGLY. A STAY OF 15 DAYS IS HEREBY ORDERED.

April 1, 1986.

By the Court,
Carl A. Jensen, Chief Judge
Minnesota Tax Court

ERRATA**Department of Revenue
Property Equalization Division****Proposed Rules Relating to Railroad Valuation****Missing Material for Weighted Median Ratio**

The calculation for weighted median ratio appearing in columns on the top of page 10 S.R. 2073 had three lines missing. The calculation is reprinted here in its entirety:

The weighted median ratio is developed by multiplying the median ratio for each class of property (agricultural, residential, recreational, commercial) by the percentage of value that class of property comprises of the total county value. An example of this calculation is as follows:

Class of Property	Amount of Value	Percent of Value	Median Ratio	Weighted Median Ratio
Residential	\$ 20,000,000	20%	85%	17.00%
Agricultural	55,000,000	55%	95%	52.25%
Seasonal— Recreational	5,000,000	5%	90%	4.50%
Commercial— Industrial	20,000,000	20%	85%	17.00%
TOTAL	\$100,000,000	100%		90.75%

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