

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

#494 Dept of Public Welfare
DPW 63 - Work Equity Program

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 12/19 Temporary Rule NO

Resubmitted and Received _____

DUE DATE 1/8/79

a. Returned to Agency w/o filing w/Secy of State 1/8
b. Approved _____ Date Sent Back to Agency _____

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1. Rules as Adopted ✓
2. Rules as Proposed ✓
3. Certificate of Board's Authorizing Resolution, where applicable N.A.
4. Order for Hearing ✓
5. Notice of Hearing ✓
   (i) Sufficiency ✓
6. Secretary of State's List ✓
7. Certificate of Acquisition of Secretary of State's List ✓
8. Affidavit of Mailing ✓
   (i) At least 30 days prior to hearing ✓
9. Statement of Need and Evidence ✓
10. Hearing Examiner's Report ✓
11. Agency's Findings of Fact ✓
12. Certificate of Board's Resolution Adopting Rules, where applicable N.A.
13. Order Adopting ✓
14. Report of Chief Hearing Examiner ✓
    (i) Finding of No Substantial Change ✓
    (ii) Permission to Incorporate by Reference, where applicable N.A.
15. Certificate of Compliance with Rulemaking Procedures ✓
16. Copy of Notice of Intent to Solicit Outside Opinion, where applicable ~~N/A~~ N.A.
17. Petition by Public, where applicable N.A.

ADMIN. [illegible]

STATE OF MINNESOTA

DEPARTMENT: Attorney Gene[illegible]

Office Memorandum

TO : Beverly Jones Heydinger
Special Assistant
Attorney General

DATE: 1/15/79

FROM : Lee E. Sheehy
Special Assistant
Attorney General

PHONE: 296-1238

SUBJECT: Rules as Approved Regarding Proposed Adoption of Permanent Rules of Department of Public Welfare Governing Work Equity Project, Rule 63.

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Note that they have NOT been filed with the State Register; this must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of the stamps of the Attorney General and Secretary of State to the last page of the rules;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages of the rules in the approved set.

Directly following the approved rules is a complete set of required documents and transcript which must be retained with the rules by you or your agency.

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

LES/dw
Enclosure

Adopted

DPW 63 Administration of Work Equity Project

A. Introduction.

1. This rule governs administration of the Work Equity Project (WEP) as authorized by Minn. Stat. §256.736 (amended, 1977) and §256D.04 (amended, 1977). WEP is a work and training demonstration project jointly administered by the Minnesota Department of Public Welfare (DPW), the Minnesota Department of Economic Security (DES), and the City of St. Paul, and funded through an initial grant of $6.8 million by the United States Department of Labor (DOL) through the Comprehensive Employment and Training Act (CETA) and the Work Incentive Program (WIN). The purpose of the project is to provide employment opportunities, training, and services in a uniform manner to applicants and recipients of General Assistance, Aid to Families with Dependent Children, and Food Stamps, and to provide a model for evaluation of certain national welfare reform proposals. The provisions of this rule are to be read in conjunction with Title IV of the Social Security Act, 42 U.S.C. §601 et seq. (amended, 1977); the Food Stamp Act of 1964, 1977, 7 U.S.C. §2011 et seq. (amended, 1977); the Comprehensive Employment and Training Act (CETA) of 1973, as amended, 29 U.S.C. §801 et seq. (amended, 1977); Titles 7, 29, and 45 of the Code of Federal Regulations; Minn. Stat. Chaps. 256, 256D, and §268.10; and DPW 44, 55, and 202.

2. This rule is binding on DPW and DES, all county welfare and human services boards (hereinafter called local welfare agencies), and applicants and recipients as defined and outlined in this rule.

3. The Commissioner of DPW and the Commissioner of DES shall issue handbooks and informational materials to local welfare agencies, to local offices of the Department of Economic Security and the Prime Sponsors, and to people who are

referred to WEP, to implement this rule in an orderly and uniform manner. For those participants whose primary language is not English, translation services shall be made available at all phases of an individual's participation in WEP.

B. Administration.

1. WEP is a pilot project designed to extend the scope and services available through the WIN program, the General Assistance Work Program, and Food Stamp work registration. In those counties selected by the Commissioner of DPW for participation in WEP, this rule shall be read in conjunction with DPW 44, 55, and 202; any irreconcilable differences shall be resolved in favor of this rule. In those counties not selected for participation in WEP, provisions of DPW 44, 55 and 202 shall apply without change.

2. WEP shall combine the efforts and resources of DPW, DES, and the City of St. Paul to provide appropriate employment or training for designated public assistance applicants and recipients and shall operate in conjunction with the St. Paul and Minnesota Balance of State Prime Sponsors designated pursuant to CETA.

3. Agreements between, among, or within DPW, DES, St. Paul CETA Prime Sponsor and the Balance of State CETA Prime Sponsor shall specify the obligations that they have for the administration of WEP. A representative of each agency shall be named to a Management Board which shall meet regularly to coordinate implementation and operation of WEP. All parties to the agreements shall have copies of the agreements on file, which are public documents available for examination during business hours.

4. WEP shall provide ~~all-services-traditional-to-WIN~~ to its participants all services available to WIN participants and shall increase the opportunities for training and jobs available through a work incentive program to additional numbers of public assistance recipients. WEP shall comply with all applicable federal statutory, regulatory, and administrative requirements of the WIN program unless specifically waived by the United States Departments of Labor or Health, Education and Welfare.

5. The Commissioner of DPW shall select the counties to participate in WEP, shall determine the date such participation shall begin and shall supervise WEP in the local welfare agencies in accordance with this Rule and with equitable standards for assistance and administration which shall be mandatory for all counties selected for participation in WEP.

6. No funds allocated to WEP shall be used for any political activity or to further the election or defeat of any candidate for public office; nor shall they be used to provide services, or for the employment or assignment of personnel in a manner supporting or resulting in the identification of programs conducted pursuant to the Social Security Act with:

a. Any partisan or non-partisan political activity or any other political activity associated with a candidate, or contending faction or group, in an election for public or party office, or lobbying for any matter at public issue;

b. Any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any such election;

c. Any voter registration activity.

7. The local welfare agencies shall be fully reimbursed for increased local expenditures resulting from operation of the Work Equity Project. DPW shall establish pre-WEP baseline data on county income maintenance, medical, social service, and administrative costs. Local welfare agencies ~~will~~ shall provide WEP with staff and other resources equivalent to the resources the agency would otherwise be required to allocate to other work and training programs and related services if the applicants and recipients had not been placed in WEP. WEP ~~will~~ shall reimburse counties for any additional costs incurred by the counties which are directly attributable to WEP, in a manner to be agreed upon between DPW and DES.

In order to determine the reimbursement formulae, counties shall provide necessary information to DPW and shall enter GA and Food Stamp information on the DPW case information system, as required by the Commissioner of DPW.

Payments to or from WEP and the local welfare agencies shall be made on a quarterly basis.

8. Income maintenance funds which are not expended by local welfare agencies as a result of a recipient's participation in WEP shall be diverted to WEP, in accordance with internal management procedures to be established by DPW and DES. The reimbursement formulae, referred to in Section B. 7., above, shall be used to determine the amounts, if any, to be diverted to WEP.

Payments to or from WEP and the local welfare agencies shall be made on a quarterly basis.

9. WEP administration shall not deny any person his/her civil rights. The program shall give due regard to the privacy rights of applicants and/or recipients, in accordance with 45 CFR Part 205 and the Minnesota Data Privacy Act, Minn. Stat. §15.162 et seq. (amended, 1978). No disclosure shall be made of personally identifiable data from records or from applicants or recipients except as permitted by law.

If any participant is requested to supply information to an outside evaluation group or individual evaluating, critiquing or monitoring WEP or its participants for the effect of WEP on its participants, or if an individual is requested to submit to any testing or interviewing by such group or individual, the participant shall be fully informed that participation is voluntary and shall be fully informed that refusal to participate in the evaluation shall not result in deregistration from WEP or disqualification from public assistance benefits. Prior to requesting information for this purpose, the evaluation group or individual shall obtain the participant's informed consent. The evaluation group or individual shall use the information acquired solely for the purposes explained to the participant at the time the consent was obtained, and as permitted by law.

10. Notwithstanding any provisions of this rule, administration of WEP is subject to changes in state or federal law. The Commissioner of DPW shall notify the local welfare agencies of changes affecting the participation of public assistance recipients in WEP. The Commissioner of DES shall notify the local offices of the Department of Economic Security and the Prime Sponsors of changes in WEP and related programs.

11. Operation of WEP is subject to approval by the ~~U.S.~~ United States Department of Health, Education, and Welfare (DHEW) for the participation of AFDC participants; the approval of the United States Department of Agriculture for the participation of Food Stamp recipients; and the approval of the entire project by the United States Department of Labor (DOL). Operation of WEP is also contingent upon sufficient funding from the DOL. The Prime Sponsors shall give prompt notice to each participant of the project's termination and shall make every reasonable effort to assist each participant to obtain substitute services.

12. Work Equity shall contract with, or obtain voluntary assistance from, outside agencies, groups, or individuals, to provide advocacy services at each WEP Center. With the consent of the participants, one or more advocates shall be present at each group orientation to inform participants of the availability of advocacy services. Literature or forms provided to participants which mention the WEP grievance and adjudication system shall state that participants are entitled to the assistance of an advocate.

C. Definitions.

1. AFDC (Aid to Families with Dependent Children): A program authorized by Title IV of the Social Security Act, 42 U.S.C. §601 et seq. (amended, 1977), to provide financial assistance and social services to needy families with dependent children.

2. Applicant: A person who requests AFDC, GA, or Food Stamps from the local welfare agency, whose eligibility has not yet been determined.

3. Appraisal: The interview of a WEP participant by WEP Center staff including support service staff to determine employability potential, the need

for support services, and to initiate an employability plan.

4. Certification: A written notice by the support service staff that necessary support services have been arranged or are available to enable a WEP participant to accept employment, training, or services; or that no such services are needed and that the individual is at that time ready for employment or training.

5. Classroom Training (CT): Vocational or other institutional training, including basic or remedial education, conducted in a non-worksite setting.

6. Commissioner of Economic Security: The Commissioner of the Minnesota Department of Economic Security or his/her designee.

7. Commissioner of Public Welfare: The Commissioner of the Minnesota Department of Public Welfare or his/her designee.

8. Community Work Project (CWP): A subsidized work component that fulfills a public service and provides an individual an opportunity to develop skills and basic work habits helpful in securing unsubsidized employment.

9. Complaints: (See Grievance)

10. Component: A structured, regularly scheduled program activity for certified WEP participants.

11. Deregistration: Termination of an individual's WEP registration.

12. DES: The Minnesota Department of Economic Security.

13. DHEW: The United States Department of Health, Education, and Welfare.

14. DOL: The United States Department of Labor, specifically, its Employment and Training Administration.

15. DPW: The Minnesota Department of Public Welfare.

16. Employability Plan: A written plan for a WEP participant that sets forth that individual's occupational goal, and the employability and support services necessary for him/her to reach that goal.

17. Employability Services: Employment and training services provided by the WEP Center to improve the work skills of a participant and aid him/her to find employment.

18. Exempt: An AFDC, GA, or FS applicant or recipient who is not required to register for employment or training under the Work Equity Project as a condition of eligibility for welfare benefits.

19. Food Stamp Program: A program authorized by the Federal Food Stamp Act of 1964, 1977, 7 U.S.C. §2011 et seq. (amended 1977), to provide assistance to needy families and individuals.

20. General Assistance (GA): A program authorized by Minn. Stat. Chap. 256D to provide financial assistance to needy families and individuals.

21. General Assistance Medical Care (GAMC): A program authorized by Minn. Stat. Chap. 256D to provide assistance to families and individuals in need of medical care.

22. Grievance: A written complaint initiated by a WEP participant. Grievances may include, but are not limited to, disputes over assignments where the participant is not refusing the assignments; alleged discrimination; and complaints about eligibility for or amounts of WEP allowances.

23. Hearing Officer: The hearing officer designated by DES to hear and decide ~~or make recommendations on~~ issues relating to grievances and sanctionable issues involving WEP participants.

24. Incentive Payment: A cash payment to an individual, who is participating in a non-wage WEP component. The incentive payment is to be an inducement to the participant to engage intensively in WEP activities as preparation for entering employment; it does not compensate or reimburse a participant for any costs that are incurred in connection with WEP participation.

25. Income Maintenance Funds: Amounts of AFDC or GA to meet basic living costs of eligible individuals in accordance with established standards of need.

26. Income Maintenance Unit (IMU): The unit of the local welfare agency which determines individual eligibility for AFDC, GA, or Food Stamps.

27. Intensive Manpower Services (IMS): Structured employment-related services; including job development and placement services offered to WEP participants so they may more readily obtain unsubsidized employment.

28. Job Service (also known as State Employment Service): A program within the Department of Economic Security, established in accordance with the provisions of the Wagner Peyser Act, 29 U.S.C. §981 et seq. (amended, 1977).

29. Management Board: Representatives from the City of St. Paul CETA, Balance of State CETA, DES, DPW, and WEP responsible for the design and administration of WEP.

30. Mandatory: A person who is not exempt.

31. Medical Assistance (MA): A program authorized by Title XIX of the Social Security Act to provide assistance to needy families or individuals in need of medical care, implemented in Minnesota by Minn. Stat. ~~Chapter~~ Chap. 256B.

32. Medical Verification: A statement signed by a physician or licensed psychologist which attests to an individual's ability or inability to accept employment or participate in other WEP activity. Oral testimony presented in person by such physician or licensed or certified psychologist may also be accepted as medical verification.

33. Non-Wage Component: An activity, such as IMS, Employability Development Plan (EDP), and Classroom Training, wherein allowances and incentives are paid for suitable participation.

34. On-the-Job Training (OJT): Employment of a WEP participant during which he/she is provided with employment training at a work site under a contractual agreement between a public or private employer and the Prime Sponsor. The employer is reimbursed for the extraordinary costs of such training.

35. Participant: An AFDC, GA or Food Stamp applicant or recipient who has registered with WEP.

36. Prime Sponsor: A public agency (or private, non-profit corporation) which operates WEP within the jurisdiction(s) in which it is expressly authorized by the DOL to administer funds authorized pursuant to CETA Titles I and II.

37. Public Service Employment (PSE): Subsidized transitional employment with non-profit employers or public employers, funded by CETA.

38. Recipient: An individual who has been determined eligible to receive AFDC, GA or Food Stamps.

39. Referring Agency : The local welfare agency, or local Job Service office responsible for referring applicants and recipients to the WEP center.

40. Sixty-Day Counseling: Counseling and other services provided by the support service staff to certified WEP participants who have been determined to have refused to participate without good cause. Its purpose is to encourage such individuals to return to active WEP participation.

41. Subsidized Employment: Work in a job for which the individual's wages and benefits are directly federally subsidized.

42. Suitable Employment: Employment consistent with the participant's employability plan; meets the criteria stated in Section I of this rule.

~~42.~~ 43. Support Services: Those social services provided or arranged by support service staff necessary to enable an individual to engage in employment or other

WEP activity.

~~43.~~ 44. Support Service Staff: Those counselors from local welfare agencies or WEP Center Offices who provide support services to WEP applicants or recipients.

~~44.~~ 45. Title XX Services: A program authorized by Title XX of the Social Security Act to provide social services to families and individuals in need.

~~45.~~ 46. Transfer: A period during which a participant is assigned to active participation in a program other than WEP as part of an approved WEP employability plan. Necessary employability and support services including incentive and transportation payments not provided under the assigned program shall be provided under WEP.

~~46.~~ 47. Unsubsidized Employment: Work in a job for which the wages and benefits are not subject to a direct federal subsidy for the individual.

~~47.~~ 48. Volunteer: An AFDC, GA, or Food Stamp applicant or recipient who, though exempt from WEP registration, volunteers for and registers for WEP.

~~48.~~ 49. Wage Component: An activity such as Public Service Employment (PSE), OJT and CWP, whereby a participant performs work for specified hours, and is paid wages and benefits.

50. Welfare Appeals Referee: The hearing officer designated by the welfare agency to hear and decide or make recommendations on issues relating to exemption or non-exemption for WEP registration or any program-related AFDC, GA or Food

Stamp benefit reductions, suspensions or terminations which result from deregistration from WEP.

~~49.~~ 51. Welfare Benefits: Those payments or services other than those provided in this rule that are available to applicants and recipients of AFDC, GA, or Food Stamps.

~~51.~~ 52. WEP Center: A field office of a Prime Sponsor from which WEP services are administered.

~~52.~~ 53. WEP Center Staff: Prime Sponsor staff in a WEP Center, or satellite office thereof, part or all of whose time is compensated by WEP funds and staff from other agencies assigned to work in a WEP Center and performing WEP functions.

~~53.~~ 54. WIN: The Work Incentive Program for AFDC applicants and recipients, authorized by Title IV-C of the Social Security Act.

~~54.~~ 55. WIN Registrant: An AFDC applicant or recipient who has registered with the Work Incentive Program.

D. Participation of AFDC and GA Applicants and Recipients.

1. All AFDC and GA applicants and recipients eligible for WEP shall be informed of its availability by the local welfare agency and shall register for WEP unless exempt or otherwise excluded from registration by the Commissioner of Public Welfare because of program or budgetary constraints.

2. The local welfare agency shall determine exemptions. The following AFDC and GA applicants and recipients shall be exempt from WEP registration:

a. children under 16;

b. children age 16 through 18, and attending school full time;

c. persons who are ill (for purposes of this Section, D.2., "illness" shall be defined as an illness or injury which is medically diagnosed as preventing him/her from engaging in suitable work activities, and which is expected to last less than 90 days);

d. persons who are incapacitated (for purposes of this Section, D.2., "incapacity" shall be defined as an impairment which either by itself or in conjunction with age prevents him/her from engaging in suitable work activities, and which is expected to last more than 90 days; AFDC recipients whose WEP exemption is based on incapacity shall be referred to the Division of Vocational Rehabilitation in the Department of Economic Security);

e. persons over age 65;

f. persons who live so far away from their WEP Center or placement that more than 2 hours per day (by reasonably available public or private transportation) would be required to travel to and from work or training (exclusive of time necessary for transporting children to or from child care), unless such commuting time is normal to the community;

g. persons whose presence in the home is needed because of the illness or incapacity of another person in the household;

h. AFDC caretaker of a child under age 6 or GA caretaker of a child under age 18 (only one such exemption is allowed per household);

i. the spouse of a WEP or WIN registrant;

j. persons receiving General Assistance who are working at least 30 hours per week, at a wage consistent with that paid in the community for similar work;

k. persons who are registered in WIN and are in a suitable employability development plan;

l. persons receiving General Assistance who have been referred to or applied for work training, work experience, or a similar program, if approved by the local agency and if the waiting period for acceptance into the program does not exceed 30 days.

3. All GA and AFDC recipients who are mandated to or volunteer to register with WEP shall be referred for registration to the local WEP office by the local welfare agency which shall ensure that transportation to and from such registration is available.

4. AFDC and GA recipients exempt from WEP registration may voluntarily register with WEP, unless the Commissioner of Public Welfare limits participation of volunteers because of program or budgetary constraints. ~~WEP may exclude from participation individual GA volunteers whose barriers to employment preclude them from obtaining gainful employment during the existence of WEP.~~

5. Treatment of Income for AFDC and GA WEP Participants.

a. WEP incentive payments of not more than $30 per week shall be disregarded in determining the grant amount for WEP participants.

b. Reimbursement for actual cost of training-related expenses shall be disregarded as income for WEP participants.

c. Wages paid in Work Equity community work projects shall be considered as earned income.

d. All other income shall be handled in accordance with DPW 44 and DPW 55.

e. Receipt of earned income by WEP participants shall not cause ineligibility for public assistance benefits (including Title XX services, Food Stamps and MA or GAMC), even though the household would be otherwise ineligible for a public assistance grant payment, until income from unsubsidized employment meets the need as computed in the existing applicable manner.

f. AFDC-Unemployed Fathers who are registered with WEP shall be exempt from the 100 hour-per-month employment limitation.

g. An amount paid to a participant for taking part in ar outside evaluation, as described in Section B.9., shall not be counted in determining public assistance grant amount.

E. Participation of Food Stamp Recipients.

1. Eligibility for the Food Stamp Program shall be determined by the local welfare agency according to applicable federal law. All Food Stamp applicants or recipients eligible for WEP shall be informed of the program's availability by the local welfare agency.

2. An individual receiving Food Stamps who is required to register with the Job Service in the Department of Economic Security shall be referred to WEP on a timely basis after 30 days of Job Service registration by the Job Service Office, unless WEP-exempt. An individual shall be considered WEP-exempt if he/she:

a. has gained employment of at least 30 hours per week; or

b. has been referred to and accepted in a work and training program sponsored by a public agency; or

c. has a job attachment as defined in Section E. ~~8.~~ 7. below.

WEP-exempt status shall be reviewed monthly thereafter by the Job Service and individuals who become non-exempt shall be referred to WEP on a timely basis.

3. Individuals referred to WEP shall be required to register with WEP and shall also:

a. Report to the local WEP office where he/she is registered, for an appraisal interview, upon reasonable request;

b. Supply additional information regarding employment status or availability for work, if requested;

c. Interview for, accept bona fide offers of, and/or continue in suitable work to which he/she is referred by the local WEP office.

4. Food Stamp recipients exempt from WEP registration may voluntarily register with WEP, unless excluded from registration by the Commissioner of Public Welfare because of program or budgetary constraints, and shall be referred to the local WEP office by the local Job Service office.

5. Food Stamp recipients exempt from the Job Service registration may voluntarily register with WEP, unless excluded from registration by the Commissioner of Public Welfare because of program or budgetary constraints, and shall be referred directly to the local WEP office by the local welfare agency.

~~6.--Food-Stamp-recipients-exempt-from-WEP-registration-may-voluntarily register-with-WEP,-unless-the-Commissioner-of-Public-Welfare-limits-participation of-volunteers-because-of-program-or-budgetary-constraints.--WEP-may-exclude-from participation-individual-volunteers-whose-barriers-to-employment-preclude-them from-obtaining-gainful-employment-during-the-existence-of-WEP.~~

~~7.~~ 6. A person who becomes ineligible for Food Stamps because of excess income attributable to his/her mandatory participation in WEP may continue in WEP until placed in permanent unsubsidized employment.

~~8.~~ 7. An individual with a job attachment shall be defined for purposes of this section as one who is on strike; lock-out; seasonal layoff; temporary layoff; has a bona fide job prospect with a definite starting date not to be later than 45 days from the date of registration with the Job Service; or is a member in good standing of a union which provides to its members free placement service and exposure to full employment. "Strike" shall be defined in accordance

with Minn. Stat. §179.01 Subd. 8; "lock-out" shall be defined in accordance with Minn. Stat. §179.01 Subd. 9.

8. An amount paid to a participant for taking part in an outside evaluation described in Section B.9., shall not be counted in determining Food Stamp eligibility.

F. Exemption Determination Disputes.

1. The referring agency shall inform all applicants and recipients of AFDC, GA, and Food Stamps of their rights to contest determination of WEP non-exempt status in accordance with the provisions of this Rule. ~~If a dispute arises between an individual and the referring agency regarding a determination of non-exempt status, the referring agency determination is binding on the individual. If, however, the individual requests a hearing on the issue, as provided in this Rule, he/she shall be considered exempt until his/her status is determined.~~ The referring agency determination is binding on the individual, unless the individual disagrees with the determination and requests a hearing on the issue. If such a request is made, he/she shall be considered exempt until his/her status is determined by the welfare appeals referee.

2. If an individual contests a determination of non-exemption on the basis of incapacity or illness, the allowable period for receipt of medical verification of such status will be thirty (30) days from the date that the client is notified of the determination. WEP shall arrange to cover the cost to the individual of obtaining the medical verification. If the individual is a WEP participant, and medical verification or other information is necessary and cannot be obtained within 30 days, the local welfare agency must notify WEP prior to the end of the initial 30-day period of any arrangements that have been made to obtain such information. An acceptable response can also be notification that the determination will be

delayed, in which case WEP should not deregister the individual until and unless the referring office's determination necessitates deregistration.

3. If, after referral, WEP Center Staff believe an individual referred as "mandatory" should be exempt, WEP ~~should~~ shall register the individual and then state the reasons in writing to the referring office and request a review of the case.

a. The referring office ~~should~~ shall inform WEP in writing of its findings within 30 days of the request. The decision of the referring office is then binding on WEP.

b. If WEP receives no response from the referring office within 30 days of its request, it ~~should~~ shall contact the referring office to determine what action has been taken.

c. If no action has been taken, the individual ~~should~~ shall be deregistered as exempt at the end of the 30-day period. However, if an individual is deregistered and the referring office later determines that he/she is non-exempt, he/she shall be re-registered in order to ensure eligibility for welfare benefits.

4. The responsibilities of the agencies described in Sections F.1. and G.1. shall include providing information to the participant that he/she shall receive without cost medical evaluations necessary to determine whether an aspect of project participation is inappropriate for medical or health reasons. Brochures and posters containing such information shall be developed and used including those directed toward women who are or may be pregnant.

G. Registration Procedures.

1. WEP Center staff shall register all individuals referred by the respective IMU, Job Service or WIN offices within 3 working days of the day the individual appears for registration. Registration is not complete until all registration requirements are met. WEP Center staff shall:

~~1.~~ a. Inform all participants about ~~the~~ WEP ~~program~~ and its requirements.

~~2.~~ b. Work History: Obtain from each applicant a complete work history, complete the WEP registration forms and provide each participant with written proof of registration;

~~3.~~ c. Job Market Information: Provide all participants, at the time of registration, with job market information and referral to available employment. All appropriate job market information available to WEP, including the Job Service Job Bank, shall be used to provide this information and facilitate such referrals;

~~4.~~ d. Registration: Notify the referring office, within 3 working days of registration, that registration has been completed.

H. Appraisal and Certification.

1. All Psychological, Psychiatric, family or mental health counseling and services, including associated testing, shall be voluntary. Participants using services or testing shall be fully informed of their scope, nature, and use and shall sign an agreement that acknowledges his/her voluntary use of the services.

This provision applies to appraisal interviews described in this Section, employability plans described in Section H.4. following, Employability Development Planning in Section M.1. and Support Services in Section O.1.c.

~~1.~~ 2. Appraisal sequence: All participants shall be appraised in the order in which they are registered. Notwithstanding the above, all AFDC-Unemployed Fathers must be appraised within 2 weeks of registration with WEP, and must be certified no later than 30 days after registration. All appraisals shall be completed prior to certification. Certification shall be completed within 30 days of registration.

~~2.~~ 3. Appraisal interview: The appraisal interview shall be conducted by WEP Center staff, including support service staff, and is intended to assess the registrant's employability potential and need for supportive services. Whenever possible, individuals shall be appraised at the time of registration. An employability plan for each participant shall be initiated at the appraisal interview.

~~3.~~ 4. Employability plan: The employability plan shall contain an employment and training services section and a support services section, and shall be designed to lead to ~~a definite unsubsidized job goal~~ employment and ultimately to self support and shall contain a definite employment goal attainable in the shortest time period consistent with the participant's skills, needs, knowledge, ability, support services needs, project resources, and job market opportunities. The employability plan shall be developed jointly by the participant and WEP staff including support service staff. Final approval of the employability plan rests with WEP staff.

~~4.~~ 5. Certification: Support service staff shall certify in writing that the necessary immediate and ~~on-going~~ ongoing support services have been provided or arranged, or that no such services are required for those individuals who have been selected for participation in WEP. Certification shall be completed within 30 days of registration. At any point during participation certification may be made for additional services.

~~5.--Support-Services:--An-uncertified-participant-may-be-provided-pre-appraisal and-appraisal-services-by-the-WEP-support-service-staff.--The-participant-must-be certified-before-receiving-WEP-support-services,-listed-in-Section-"O"-of-this Rule.--A-WEP-participant-may-be-certified-at-any-time-during-the-registration period-and-additional-certifications-may-be-done,-if-necessary.--After-certification, a-participant-who-is-not-employed-may-receive-certified-support-services-until successful-completion-of-his/her-EP.--Upon-entering-employment-(either-unsubsidized or-subsidized),-WEP-support-services-may-be-provided-for-up-to-30-days-after-entering employment.--These-services-may-continue-for-a-maximum-of-90-days-at-the-discretion of-the-support-service-staff.--In-an-emergency-such-services-may-be-provided-for an-additional-30-days-beyond-the-90-day-maximum.~~

~~6.~~ 6. Support services: Until a participant is certified, only pre-appraisal and appraisal services shall be provided by the WEP support service staff. The participant shall be certified before receiving WEP support services, listed in section "O" of this rule. A WEP participant shall be certified at any time that support services are needed, and additional certifications shall be done as needed. After certification a participant who is not employed shall receive certified support services until successful completion of his/her EP. Upon entering employment (either unsubsidized or subsidized), WEP support services shall be provided for a period of 30 days. Such services shall continue for 90 days if

they are necessary for the participant to continue such employment. In an emergency, such services shall be provided for an additional 30 days beyond the 90 days if the same are necessary for the participant to continue such employment.

~~6.~~ 7. Benefits and job referral: Welfare benefits shall not be denied by reason of the individual's referral to a job, to WEP, or solely by reason of an individual's participation therein.

I. Appropriate Employment and Training Criteria.

1. Standards for employment and training assignments: Except as otherwise provided in this Rule, WEP participants shall accept assignment to employment or other WEP activity as determined appropriate by WEP Center staff or shall be subject to deregistration. The following standards must be met before participants shall be required to accept employment or training assignments, including OJT, PSE, classroom training and Community Work Projects:

a. Employability plan: An employment or training assignment must be within the scope of an individual's employability plan. This plan may be modified jointly by the participant and WEP staff including support service staff. Final approval of the employability plan rests with WEP Center staff. If the participant disagrees with the decision, ~~she/he~~ he/she may initiate a grievance;

b. Performance capability: The job or training assignment must be related to the capability of the individual to perform the task on a regular basis. Any claim of adverse effect on physical or mental health shall be verified by a physician or a licensed or certified psychologist, and shall

attest to the individual's ability or inability to accept employment or participation in other WEP activity. Pending verification the participant shall be assigned to the EDP component as defined in Section M. 1. below;

c. Commuting distance: The total daily commuting time from home to the assigned work or training site and return shall not normally exceed 2 hours, not including time required to transport a child/children to and from a child care facility. If a longer commuting distance and time is normal to the community, the round trip commuting time shall not exceed the norm for that community;

d. Child care standards: Required child care shall meet the standards specified by the Department of Public Welfare in Rules 2 and 3, shall be licensed as required and defined therein, and shall be available during the hours the individual is engaged in a WEP assignment plus any additional necessary commuting time;

e. Health and safety standards: The employment or training site to which the individual is assigned shall ~~not be in violation of~~ be in compliance with applicable federal, State and local health and safety laws, and regulations; ~~and standards;~~

f. Non-discrimination: No assignments shall be made which discriminate in terms of age, disability, sex, race, creed, color, national origin, or public assistance status. Employment and training assignments shall in no way contribute to discriminatory hiring practices;

g. Employability and support services: No individual shall be referred to employment or training unless employability and support services necessary for participation are available. The cessation or withdrawal of such

necessary services while the individual is participating in an assignment shall constitute good cause for refusal to participate.

2. Other employment criteria: In addition to criteria in paragraph 1 of this section, appropriate employment criteria shall include the following:

a. Appropriate employment: Appropriate employment may be temporary, permanent, full-time, part-time or seasonal, if such employment meets the other employment standards of this section;

b. Prevailing wages: All participants in WEP employment components shall receive a wage which shall meet or exceed the statutory federal or State minimum wage, whichever is higher, and which is not less favorable than the wage normally paid for similar work by the employing agency or service;

c. Hours of work: The daily and weekly hours of work shall not exceed those customary to the occupation;

d. Exemption from employment: No individual shall be required to accept employment if:

~~(1) The position offered is vacant due to a strike, lock-out, or other bona fide labor dispute;~~

~~(2)~~ (1) The individual would be required to work for an employer contrary to the conditions of his/her existing membership in the union governing that occupation. However, employment not governed by the rules of a union in which ~~she/he~~ he/she has membership may be deemed appropriate.

~~(3)~~ (2) The job offered would interrupt a program in progress under an approved WEP employability plan, or would impede return to his/her regular job. This does not, however, preclude temporary employment during the interval prior to an individual's return to his/her regular job.

~~(4)~~ (3) The individual would be required to join a union, or refrain from joining a bona fide labor union as a condition of being employed, unless union membership is a requirement of a collective bargaining agreement.

e. WEP shall not knowingly refer an individual to a position vacant due to strike, lock-out, or other bona fide labor dispute. If WEP should inadvertently make such a referral, no individual shall be required to accept such employment.

f. WEP shall not knowingly contract with any employer if full or partial displacement of currently employed, full-time or part-time workers will result. Full displacement occurs when an employed worker loses his/her job for reasons other than normal turnover or the job is altered so as to effect a reduction of pay. Partial displacement occurs when the use of WEP registrants leads to a reduction of non-overtime hours in a normal work-week of workers presently employed in the same activity.

3. Other training criteria: In addition to criteria in paragraph 1 of this section, appropriate training criteria shall include the following:

a. The quality of the training must meet local employers' requirements so that individuals will be in a competitive position within the local labor market;

b. The training shall also be likely to lead to employment which will meet the appropriate employment criteria.

J. General Benefits for Program Participants.

1. Worker's compensation: Each participant in an On-the-Job Training or Community Work Project program under WEP shall be assured of worker's compensation at the same level and to the same extent as other employees of the employer who are similarly employed or engaged and are covered by a State or industry worker's compensation statute. Whether provided through the State's compensation agency or a private insurance carrier, this coverage includes medical and accident insurance as well as income maintenance insurance.

2. Insurance: Where a participant is employed or engaged in a Community Work Project, On-the-Job Training, or classroom training, where others similarly employed or engaged are not covered by an applicable worker's compensation statute, the participant shall be provided with medical and accident insurance coverage. Whether provided through the State's worker's compensation agency or a private insurance carrier, WEP shall provide such participants with medical and accident insurance coverage comparable to the medical and accident insurance provided under the applicable State worker's compensation statute. However, WEP shall not be required to provide these participants with the income maintenance insurance coverage in the statute.

3. Other fringe benefits: Each participant in an On-the-Job Training or Community Work Project program shall also be assured of health insurance, unemployment insurance (to the extent such benefits are allowable), coverage under collective bargaining agreements and other benefits at the same levels and to the same extent as other employees similarly employed, except that retirement

benefits shall be limited pursuant to 29 CFR §98.25 and Chapter 720, Minnesota Laws (1978), and to working conditions neither more nor less favorable than such other employees similarly employed. Nothing in this section shall be interpreted to require coverage for health insurance, unemployment insurance and similar benefits for participants, such as Community Work Project participants, where there is no employee of the employer performing the same or similar work in the employment situation. In determining whether the work is the same or similar to that of a person regularly employed, the WEP Center staff ~~will~~ shall take into consideration, but shall not be limited to, employment status, type of work performed, job classification and method of appointment to the position.

K. Allowances and Incentives for WEP Participants.

1. Incentive payments: Individuals shall receive incentive payments at a rate of $6 per day (maximum of $30 per week) for each day in which they participate in a non-wage WEP component. No incentive pay shall be authorized for participation in the intake functions of registration, orientation, appraisal and initial employability planning, or while assigned exclusively to support services.

2. Transportation expenses:

a. ~~Will~~ Shall be paid to individuals for actual costs they incur because of their participation in non-salaried components such as classroom training, Intensive Manpower Service, or Employability Development Planning. Expenses are based on actual costs of public transportation or car pool payments, or 13¢ per mile for actual number of miles driven, not to exceed 100 miles per day (unless the participant can establish higher transportation costs that are both necessary and reasonable).

b. Shall also be authorized for individuals placed in employment, OJT, PSE, or CWP. Payments for transportation expenses shall be continued for no more than 4 weeks or until these individuals receive their first full paychecks, or grant adjustments reflecting new work-related expenses, whichever occurs first.

3. WEP Center staff ~~will~~ shall determine the amount of subsistence allowances, in addition to incentive and transportation payments, to be paid to individuals for separate maintenance when they are in training facilities beyond normal daily commuting distance from their homes. These allowances shall be paid for each calendar day within the training period, including holidays and weekends, during which individuals are participating in such training, and are residing away from home.

4. Transportation expenses in amounts equivalent to two one-way trips shall be paid to individuals enrolled at training facilities located beyond normal commuting distance. These payments are to cover the initial trip to the training facility and for the final trip home at the completion or other termination of such training. The rate of reimbursement shall be based on actual costs of public transportation or car pool payments, or 13¢ per mile for actual number of miles driven.

5. WEP Center staff ~~will~~ shall determine and authorize allowances for non-recurring expenses which are required for employment or training ~~include~~, including, but are not limited to, payments for auto repairs, auto insurance, special clothing, tools and equipment; participants shall not be required to reimburse WEP Center for any such allowances received.

6. Petty Cash: WEP Center may establish petty cash funds to meet participants' small cash needs incidental to training, transportation, or referral to employment which cannot be met by other procedures; participants shall not be required to reimburse the WEP Center for any such funds received.

L. Relocation Assistance.

WEP ~~may~~ shall assist a certified individual to relocate his/her place of residence when WEP staff determines such relocation is necessary in order to enable him/her to become permanently employed and self-supporting. Relocation of AFDC participants is subject to the approval of the Secretary of Labor or his/her designee. Such assistance shall be given only to an individual who concurs with the relocation and who has a bona fide job offer at the place of relocation at a wage rate which meets full need, as determined by the state in which the individual relocates. Assistance under this section shall not exceed the reasonable costs of transportation for the individual, dependents, and household belongings, plus such relocation allowance as WEP determines reasonable.

M. The WEP Components.

1. Employability Development Planning (EDP): The EDP component may include:

a. Orientation to services available in WEP or through referral to other resources;

b. In-depth assessments of those individuals who have problems which must be resolved before they can participate in other WEP components or activities;

c. Special WEP support services, such as help with money management, marital or emotional problems, for individuals who need such services in order to participate in WEP;

d. Those services arranged or provided for by the support service staff for those individuals whose barriers to employment are great and cannot be removed by normal WEP services.

2. Intensive Manpower Services (IMS):

a. The Intensive Manpower Services component provides employment services, which shall include vocational counseling, job development, exposure to labor market information, job placement, job-seeking skills training, and job finding clubs to assist the individual to obtain unsubsidized employment.

b. If unsubsidized employment is not available, the IMS component shall be used to develop opportunities for individuals in community work projects, ~~on-the-job-training~~ OJT and CETA ~~public-service-employment~~ PSE. Subsidized employment is intended to provide an individual a work-related experience until such time as ~~she/he~~ he/she can be placed in a unsubsidized position.

c. Participation in IMS shall be limited to three weeks; if the participant has not completed the IMS portion of his/her employability plan so that the participant is not ready for placement in another WEP component, additional three week periods shall be authorized if approved by the WEP Center Staff supervisor.

3. Classroom Training (CT): Classroom training includes vocational, college or other institutional training, as well as basic or remedial education, conducted

by a qualified instructor. ~~at-a-non-work-site.~~ Classroom training shall be limited to one year and may be further limited by budgetary constraints. Classroom training shall lead to employment and self-sufficiency in the shortest time possible, consistent with the participant's employability plan.

4. On-the-Job Training (OJT):

a. OJT is an employment opportunity which includes training. Under this component, a certified participant is hired by a private or public employer, who provides training subsidized under contract with WEP. Employers provide increased supervision and training for which they ~~will~~ shall be reimbursed by WEP for the extraordinary costs of such training and supervision.

b. An OJT participant is considered to be employed, insofar as employment affects AFDC, GA, or ~~FS~~ Food Stamp benefit determinations. However, an OJT participant shall remain an active participant, and shall not be deregistered from WEP.

5. Transfer: Certified individuals referred to and accepted by other eligible federal or state-funded employment or training programs, and who meet all eligibility requirements under those programs, shall be temporarily suspended from WEP, if it is appropriate to the employability plan. Such individuals shall normally be compensated in accordance with and through the provisions of those programs. However, when such compensation is not available or would be disadvantageous to the individual, the participant may choose to accept WEP benefits instead. Notwithstanding such transfer, support and job services which are not provided under the alternative program, but which are necessary to permit the individual to continue in the program, ~~will~~ shall be provided or arranged for by the support service staff.

6. Community Work Projects (CWP's):

a. CWP's provide participants with subsidized employment until they are able to move into other components or activities or into unsubsidized employment. CWP slots ~~will~~ shall be developed to meet the individual needs of the participants and shall meet the ~~definition-of-appropriate-work,~~ employment criteria set forth in Section I of this rule.

b. CWP's shall not result in the displacement of currently employed workers, including partial displacement ~~such-as-a-reduction-in-hours,-work,-wages,-or employment-benefits.--In-addition,~~ (see Section I.2.f. of this rule). CWP's shall be used to support positions for public service needs which have not been met, or to provide new public services in a unit of State or local government, a public agency or institution, or a private nonprofit organization.

c. When developing a CWP position, the WEP staff ~~must~~ shall determine if there is a collective bargaining agreement between the employer and the employees, or their representatives. Where an agreement exists and is applicable to the establishment and the occupation, the CWP contract ~~must~~ shall not conflict with the agreement. A statement to this effect, signed by the employer ~~will~~ shall be made a part of or affixed to the WEP/CWP contract.

7. Public Service Employment (PSE): CETA PSE Title VI positions shall, to the extent possible, be available to WEP participants. Slots shall not be set aside for WEP participants by position or job; the Prime Sponsor shall accept referral of WEP participants for CETA Title VI vacancies. When participants are transferred to CETA Title VI positions, efforts shall be made to place individuals in jobs where they will have an opportunity to retain those positions as unsubsidized employment.

N. Employee Status.

A WEP participant shall not by virtue of registration in WEP be deemed an employee of any public agency, and shall not be subject to the provisions of ~~laws~~ law relating to State or federal employees, including those relating to hours of work, rates of compensation, leave, unemployment compensation, and State or federal employee benefits.

O. Support Services.

1. Support services available to WEP registrants for the purpose of facilitating employability plans and self-support goals shall include:

a. Day care service (children): Personal care during the day (for less than 24 hours) in the child's own home or in a nurturing and protective setting to substitute for or supplement the child rearing provided by the child's parents or caretaker, as well as integral but subordinate medical service.

Child care shall be suitable for the individual child, and the caretaker shall be involved in the selection of the child care facility if more than one facility is available. If only one facility is available, the caretaker shall accept it, unless the caretaker can show that it is unsuitable for the child. Such child care arrangements shall be maintained until the caretaker is able to make other satisfactory arrangements. Child care arrangements ~~must comply~~ shall be in compliance with the standards as set forth in 45 CFR §228.42.

b. Family planning: Services provided to enable individuals to voluntarily limit family size or plan time intervals between children. These are available to participants on a voluntary basis.

c. Counseling services: Professional services to assist individuals and families in coping with and resolving any personal or relationship concerns.

d. Health services (employment related): Arranging and facilitating access to and use of physical and mental health resources, to identify any physical or mental limitations which would restrict vocational options.

For GA and AFDC recipients, this medical examination is a Medical Assistance or General Assistance Medical Care expenditure and is not to be paid for under WEP.

e. Vocational rehabilitation services: Special employment assistance for individuals who are disabled for social, economic, or mental or physical health reasons (including such things as surgery, psychiatric treatment, prosthetic devices, speech or hearing therapy, visual services, dental care, etc.) to correct or modify a physical or mental condition which inhibits employment.

Vocational rehabilitation services ~~may~~ shall be provided with WEP funds only when not available through the Division of Vocational Rehabilitation in the Department of Economic Security, and when there is reasonable expectation that the services will lead to unsubsidized employment and the services can be provided within the constraints of the WEP program and budget.

2. The following support services ~~may~~ shall be arranged for or provided when determined necessary by the WEP Center staff to successful completion of an employability plan:

a. Homemaking service: Providing substitute care in the absence or disability of the caretaker, personal care for ill or disabled individuals, and instruction on effective home management, self-care and social skill methods.

b. Housing services: Assisting individuals to obtain, maintain, and improve housing, and/or to modify existing housing.

c. Legal services: Arranging for assistance in resolving noncriminal legal matters and the protection of legal rights.

d. Money management services: Arranging and providing assistance in developing effective budgets and managing indebtedness.

e. Transportation services: Arranging and providing travel and escort to and from community resources and facilities.

P. WEP Adjudication System.

1. General: All Work Equity participants shall have available to them an appropriate system for appealing agency actions within the Project. The particular system used will depend on the conditions under which the participants are registered in WEP; i.e., whether they are applicants for or recipients of AFDC, GA, or Food Stamps; and whether they are mandatory participants or volunteers.

2. Disputes involving WEP registrations: A welfare appeals referee shall conduct welfare hearings pursuant to the procedures prescribed in 45 CFR §205.10, 7 CFR §271.1, and Minn. Stat. §256.045 (1976), in cases where applicants or participants contest the registration or exemption requirements, or any program-related

AFDC, GA, or ~~FS~~ Food Stamp grant reductions, suspensions, or terminations which result from deregistration from WEP. These procedures are available to all AFDC, GA, or ~~FS~~ Food Stamp participants who are required to register with WEP as a condition of eligibility.

3. Issues to be decided under the WEP adjudication system: Grievances and sanctionable actions shall be resolved through the WEP adjudication system. Written records of all disputes shall be maintained by the WEP Center.

a. Grievances are written complaints which do not involve the threat of WEP sanctions. Such complaints may arise over questions of actions by the WEP Center staff or work site staff including:

(1) Wages or allowances;

(2) Hours of work or training;

(3) Work or training assignments;

(4) Disciplinary action; and/or,

(5) Any disputes involving volunteers.

b. While adjudication is pending, the welfare grant amounts ~~will~~ shall be determined in relation to ~~earnings~~ the income actually available to the recipient.

c. Grievances shall be initially handled informally by the WEP Center Supervisor. Within 5 working days of receipt of written notice from the participant the matter will be reviewed and a decision issued. An individual who is not satisfied with the disposition of the grievance may request a hearing at the WEP Center. This

hearing will be conducted according to the WEP adjudication process described in ~~4-6.-et.-seq.~~ Sections P. 4, 5, and 6 below.

~~b.~~ d. Grievances involving discrimination on the basis of race, religion, color, national origin, sex, or age shall be handled according to Equal Opportunity provisions established in 29 CFR Part 31, and 45 CFR Part 80, and to the extent applicable, in compliance with Title VI of the Civil Rights Act of 1964, and the regulations issued thereunder. This section is not intended to abridge the rights of WEP participants to seek redress for unlawful discrimination through other available administrative and judicial processes.

~~c.~~ e. Sanctionable actions are those for which a participant may be deregistered from WEP for failure or refusal to participate without good cause. All sanctionable issues, if appealed, shall be processed through the WEP adjudication system, described in this rule. They include:

(1) Failure or refusal without good cause to attend scheduled WEP appraisals or other interviews;

(2) Failure or refusal without good cause to accept appropriate child care as may be provided for the purpose of enabling the individual to participate in WEP;

(3) Failure or refusal without good cause to accept offers of, or referrals to appropriate employment or training;

(4) Quitting an appropriate job without good cause, or being fired from an appropriate job for cause;

(5) Failure or refusal without good cause to accept assignment to WEP components or to otherwise participate in WEP.

4. Initial conciliation efforts and WEP hearing:

a. If the WEP staff believes that a mandatory WEP participant has committed a sanctionable action, it shall make every effort toward an informal conciliatory resolution of the underlying reasons. The conciliation period shall not exceed 30 days, and may be terminated earlier if it appears no resolution is possible. When all such efforts are exhausted, WEP may issue a Notice of Intended Deregistration.

~~a.~~ b. When WEP determines that all informal, conciliatory measures have been exhausted, the Notice of Intended Deregistration shall be issued to the participant. The Notice shall state that the participant has failed or refused to participate in required WEP activities without good cause, and is subject to deregistration. The Notice shall also inform the individual of his/her right to a fair hearing if the individual believes the proposed action is unwarranted. The Notice shall be accompanied by the forms required to file for a hearing and the instructions necessary to complete and file the forms. If the individual desires a hearing ~~she/he~~ he/she must request the same within 10 days of the date of mailing of the Notice.

~~b.~~ c. Such hearing ~~will~~ shall be held by a hearing officer of the Department of Economic Security in the manner prescribed by Minn. Stat. §268.10, Subd. 3 (1976); and if an AFDC registrant is involved, also in accordance with 29 CFR §§56.66 - 56.68.

The hearing officer ~~may~~ shall rule:

(1) That the individual has failed or refused to participate without good cause in WEP and that appropriate deregistration shall be initiated;

(2) That good cause has been shown for failure or refusal to participate and the individual should be retained in the program;

(3) That the request for a hearing is dismissed because:

(a) It was filed untimely without good cause;

(b) It has been withdrawn in writing;

(c) The individual failed to appear at the hearing without good cause; or

(d) Reasonable cause exists to believe that the request for a hearing has been abandoned or repeated requests for rescheduling are arbitrary and for the purpose of unduly delaying or avoiding a hearing;

(4) That the participant was appropriately or inappropriately assigned to a WEP activity by the WEP staff; or

(5) Render such other rulings as are appropriate to the issues in question.

d. DES shall mail copies of the hearing officer's decision to the participant, the WEP Center and WEP Central, the local welfare agency, the Department of Public Welfare and other ~~interested~~ parties to the hearing. Copies to the participant and his/her representative, if any, shall be accompanied by the forms required to file an appeal from an adverse decision, and the instructions necessary to complete the forms. Upon receipt of the decision, the local welfare agency shall notify the participant of the sanctions that may be imposed by the county, and the individual's right to appeal.

~~e.~~ e. If any party disagrees with the decision of the hearing officer and desires a review of said decision, ~~she/he~~ he/she must, within 10 days of the date of the decision, request a review of the decision. If the county agency or WEP requests review, notice must be given to the registrant at the same time as the request for review is filed. A request for review by any party shall not stay implementation of the hearings officer's decision.

5. Appeal process for AFDC registrants:

a. If the issues decided by the hearing officer involve an AFDC participant, the party who disagrees with the decision of the hearing officer may file the request for review with the Commissioner of Economic Security.

b. A hearing shall be held before the Commissioner of Economic Security or his duly-authorized representative, in the manner prescribed by Minn. Stat. §268.10, Subd. 5 (1976), and in accordance with 29 CFR §56.64. The Department of Economic Security shall mail to all interested parties a notice of the filing ~~of~~ and a copy of the findings and the decisions of the Commissioner or his/her representative.

c. Any party may file an appeal from the decision of the Commissioner of Economic Security in either of two ways:

(1) With the National Review Panel of the U.S. Department of Labor, in accordance with the provisions of 29 CFR §§56.70-75 and 45 CFR §§224.70-75; or,

(2) With the Minnesota Supreme Court pursuant to Minn. Stat. §256.736, Subd. 4(4) (amended, 1977) and Minn. Stat. §268.10, Subd. 8 (1976).

6. Appeal process for GA and Food Stamp participants:

a. If the issues decided by the hearing officer involve a GA or Food Stamp participant, the party who disagrees with the decision of the hearing officer shall file the request for review with the Department of Public Welfare. Such a hearing shall be held in the manner prescribed by Minn. Stat. §256.045, Subd. 2 or Subd. 3 ~~(1976)~~: (amended, 1978).

b. Subsequent appeals may be made pursuant to Minn. Stat. §256.045, 3 et. seq. ~~(1976)~~: (amended, 1978).

7. Post-determination actions, counseling:

a. WEP benefits shall cease, protective or vendor payments shall be initiated, and a 60-day counseling period by WEP support service staff shall begin the fifth business day following:

~~a~~: (1) The expiration of the prescribed time period for filing a request for a hearing and proposed deregistration from WEP, or the date on which the request for such hearing is withdrawn; or

~~b~~: (2) The date of the DES hearing officer's decision that the registrant has failed or refused to participate in WEP without good cause; or

~~c~~: (3) A decision by the appellate body, referred to in Section P. 5. or 6. supra, which reverses a decision favorable to a WEP registrant.

b. Counseling shall be provided by support service staff for a period of up to 60 days, unless:

(1) The individual is not a certified WEP participant, or

(2) The individual has already received such a counseling period during the current registration, and is therefore not eligible for further counseling and is to be deregistered.

c. The purpose of the counseling period is to encourage the individual to participate in WEP. Upon completion of the 60-day counseling period, if the WEP support service staff determines that the individual has continued to refuse to participate without good cause, ~~she/he~~ he/she ~~will~~ shall be deregistered and sanctions shall be initiated. Counseling may be terminated at any time during the 60-day period, when the WEP support service staff determines that counseling efforts are unsuccessful and the individual will not participate in WEP. The WEP support service staff shall notify WEP that 60-day counseling is unsuccessful, and WEP shall deregister the individual for failure or refusal to participate without good cause.

8. Post-determination actions: Sanctions.

a. A voluntary participant shall not have his/her welfare benefits terminated, reduced, or suspended because of failure or refusal to participate in WEP. However, all WEP benefits shall be terminated when the individual is deregistered for failure to participate. The volunteer may subsequently participate in WEP according to the provisions of Section P. 9.

b. The following sanctions apply to a mandatory WEP participant who has been deregistered:

(1) If the individual is the only dependent child in an AFDC family, assistance for the entire family is terminated;

(2) Any other individual shall have his/her portion of the GA or AFDC grant deleted. Assistance to the other family members will be provided through protective or vendor payments;

(3) Food Stamp benefits shall be terminated in accordance with procedures outlined in the Food Stamp Act.

9. Post-determination actions: Readmittance to WEP. If, during the 60-day counseling period, the WEP support service staff determines that a participant is progressing satisfactorily, ~~she/he~~ he/she shall be reassigned to an active WEP component. If the 60-day counseling period is unsuccessful, as determined by the WEP support service staff, and an individual is deregistered from WEP for failure to participate without good cause, ~~she/he~~ he/she must remain deregistered from WEP for 90 consecutive calendar days from the date the welfare grant was reduced or terminated. The individual must give evidence of willingness to participate before he/she may again register for WEP. The person's verbal agreement to cooperate is sufficient evidence of "willingness to participate". If an individual has failed to participate in WEP without good cause two or more times, ~~she/he~~ he/she must remain deregistered for six months from the date the welfare grant was adjusted. WEP need not register any recipient whose prior failure to participate was the result of criminal or other activities which presented a hazard to WEP staff or to other WEP participants.

Q. Deregistration.

1. All deregistrations shall be performed by WEP.

2. Deregistration is necessary when:

a. An individual is found to have failed or refused to participate in WEP

without good cause;

b. An incorrect determination of non-exemption has been made;

c. An individual becomes exempt, and the local welfare agency informs WEP Center that ~~she/he~~ he/she does not wish to volunteer;

d. An individual becomes ineligible for welfare benefits, except where ~~she/he~~ he/she is participating in a WEP component or is employed and receiving WEP-funded support services.

3. The local welfare agency shall notify the WEP Center of any change which will affect a welfare recipient's welfare or exemption status in such a way as to warrant deregistration.

4. Volunteers who withdraw from WEP shall be deregistered without penalty.

5. Volunteers who are found to have refused to participate after receiving a Notice of Intended Deregistration, or who have requested a hearing on the matter and have received an adverse decision, shall be deregistered as exempt.

6. Persons who volunteer but for whom no suitable employment or training is available shall be deregistered as exempt.

R. Severability

The provisions of this rule shall be severable and if any phrase, clause, sentence or provision is declared illegal or of no effect, the validity of the remainder of this rule and the applicability thereof to any person or circumstances shall not be affected thereby.

APPROVED AS TO FORM AND LEGALITY
JAN. 12 1979 19__
WARREN SPANNAUS, ATTORNEY GENERAL
BY _____
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JAN 12 1979
Joan Anderson Growe
Secretary of State
2:30 PM

ADMIN 1000

STATE OF MINNESOTA

DEPARTMENT of Public Welfare

Office Memorandum

TO : Lee Sheehy
Attorney General's Office
Department of Administration

DATE: 1-12-79

FROM : Gail Olson
DPW-WEP Supervisor

PHONE: 6-1835

SUBJECT: DPW Rule 63

Enclosed please find the following items relating to DPW Rule 63, Work Equity:

1. Commissioner's Amended Order and two copies.

2. Order from Chief Hearing Examiner (approving incorporation by reference of federal regulations).

3. Memo from Natalie Gaull explaining the intent of her Finding #44 relating to proposed addition of § D. 2. m.

4. Three copies of revised page 43 of the Rule (this is rather than recopying the entire rule, since this was the only additional revision).

We have two additional procedural questions:

1. There are some references in the Rule to 1978 session laws; since they have now been codified, referencing them would be simpler by changing the citations to the new codifications. May we simply do this by correcting the rule copy we submit to the State Register for publication, or must those changes go through all the approval mechanisms? If the latter is true, we would prefer not to change them, since time is of the essence.

2. Along the same line of conserving time, may we submit the adopted rule to the State Register immediately (no later than Monday, January 15th) in order to have it published on January 29th?

Please call either Bev Heydinger at 6-8405 or me at 6-1835 as soon as possible. Thanks much for your assistance.

Encl.

CC: Beverly Jones Heydinger

OFFICE OF HEARING EXAMINERS

BEVERLY JONES HEYDINGER
Special Assistant
Attorney General

January 10, 1979

NATALIE L. GAULL
Hearing Examiner

6-8114

Rule DPW 63, Work Equity; Docket No. DPW-78-057-NG

I am in receipt of your Memorandum of January 9, 1979, concerning Finding 44 of my Report with regard to the applicable rule.

I have reviewed the language which was questioned by Mr. Sheehy. I have concluded that the final sentence,

> The Examiner finds that Section D.2. of the rule, as proposed, is reasonable and necessary.,

was intended to refer to that section of the rule as a whole. You will note that that section of the rule contains approximately 13 subsections. The language referring to proposed Subsection D.2.m. was intended to indicate that addition of that language would be preferable. However, failure to add the language does not, in this Examiner's opinion, affect the reasonableness of and necessity for this section as a whole. Again, I would like to emphasize that addition of the language contained in Section D.2.m. would be beneficial to the rule, but is not necessary to make Section D.2. reasonable and necessary.

I hope that this resolves any ambiguities both for the Department and for Mr. Sheehy. If any further clarification is needed, please contact me.

NLG:sw
cc: Mr. Lee Sheehy

ATTORNEY GENERAL

BEVERLY J. HEYDINGER
Special Assistant
Attorney General

January 8, 1979

LEE E. SHEEHY
Special Assistant
Attorney General

296-1288

In the Matter of the Proposed Adoption of Permanent Rules of the Department of Public Welfare Governing the Work Equity Project, Rule 63.

The above-captioned rules have NOT been approved by this office as to form and legality for the following reasons:

1.) The agency has not obtained permission to incorporate certain materials by reference, as required by Minn. Stat. § 15.0412, Subd. 4 E.g., DPW 63 P(2-4).

2.) The agency has failed to address the Hearing Examiner's conclusion that a provision relating to quarterly reporting requirements is needed in the proposed rule. See Hearing Examiner's Finding No. 44.

After agency consideration and appropriate action, if any, regarding the above-noted matters, the rules may be resubmitted to this office.

If you have any questions, do not hesitate to call me.

LES/bw
cc: Duane Harves

DPW-78-057-NG

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF PERMANENT RULES OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING THE WORK EQUITY PROJECT, RULE 63.

ORDER OF THE CHIEF HEARING EXAMINER

WHEREAS, on January 9, 1979, the Minnesota Department of Public Welfare (hereinafter "Department"), by its Special Assistant Attorney General, Beverly Jones Heydinger, submitted a request to the Chief Hearing Examiner for approval of the incorporation by reference of existing federal law and regulations in Rule DPW 63; and

WHEREAS, pursuant to Minnesota Statutes 1978, § 15.0412, Subd. 4, agencies may incorporate by reference provisions of federal law or rule or other materials from sources which the Chief Hearing Examiner determines are conveniently available for viewing, copying and acquisition by interested persons; and

WHEREAS, the Chief Hearing Examiner has reviewed Rule DPW 63 as proposed for adoption including the eight specific references to federal law or regulation and has found that they exceed 3,000 words and would exceed five pages of publication in the State Register, and further, has found that such citations are more in the nature of references rather than incorporation by reference but makes the above finding on length as an accommodation should it be later found that the references are incorporations by reference; and

WHEREAS, the Chief Hearing Examiner finds that the referenced federal law and regulations are conveniently available for viewing, copying and acquisition by interested persons.

NOW, THEREFORE, it is ordered, that the Division shall have the approval of the Chief Hearing Examiner to incorporate by reference in their proposed rules the above-referenced documents.

Dated this 11th day of January, 1979.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA

COUNTY OF RAMSEY

EDWARD J. DIRKSWAGER, JR.

COMMISSIONER OF PUBLIC WELFARE

In the Matter of the Proposed Adoption of Rule 63 of the Department of Public Welfare Governing the Administration of the Work Equity Project

AMENDMENT TO ORDER ADOPTING RULE 63

DOCKET NO. 78-057-N6

The Commissioner of Public Welfare hereby amends his Order Adopting Rule 63, dated December 12, 1978. This amendment addresses the incorporation by reference of federal regulations and the correction of a statutory citation. This amendment is intended to supplement the Order Adopting Rule 63 and no part of that Order is vacated by this amendment.

The Commissioner's Order Adopting Rule 63 is hereby amended by addition of the following Finding 29:

> The Commissioner finds that the inclusion in the Rule of citations to the Code of Federal Regulations is reasonable and necessary. The inclusion of these citations without repetition of the complete language of the regulations is approved by the Chief Hearing Examiner, Duane Harves.

The Commissioner's Order is hereby further amended by addition of the following Finding 30:

> The Commissioner amends the Rule to correct the statutory citation in Section P. 6. to read "(amended, 1978)" rather than "(1976)". The statute was improperly cited, and the correction is reasonable and necessary. Furthermore, the 1978 amendment does not affect Work Equity and does not constitute a substantial change to the rule.

IT IS THEREFORE ORDERED, that the Rule identified as Rule 63 of the Rules of the Minnesota Department of Public Welfare, as adopted on December 12, 1978, is hereby amended as set forth herein.

Dated: January 10, 1979

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

James Weiler

for Edward J. Dirkswager, Jr.
Acting Commissioner

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF PUBLIC WELFARE

In the Matter of the Proposed)
Adoption of Permanent Rules of)
the Department of Public Wel-) REPORT OF HEARING EXAMINER
fare Governing the Work Equity)
Project, Rule 63.)

The above-entitled matter came on for hearing before Natalie L. Gaull, duly appointed as Hearing Examiner, on June 19, 1978, in Room 81, State Office Building, Saint Paul, Minnesota 55155, at 9:00 a.m. The hearing was continued at the same time and place on June 20, 1978. The hearing was continued on June 22, 1978, in the Council Chambers, St. Cloud City Hall Annex, Fourth Avenue South, St. Cloud, Minnesota 56301, at 10:00 a.m. The hearing was also continued on June 23, 1978, in the Appleton Civic Center Auditorium, Appleton, Minnesota at 9:00 a.m.

This proceeding is a rules hearing held pursuant to Minn. Stat. Ch. 15, to determine whether the proposed rule should be adopted. Copies of this Report are available for review from the Department of Public Welfare, or from the Office of Hearing Examiners.

Members of the agency panel included: Beverly Jones Heydinger, Special Assistant Attorney General, Department of Public Welfare; Gary Weisman, Assistant to the Director of Balance of State, Department of Economic Security; Readus Fletcher, Manpower Planner, Division of Manpower Programs, City of Saint Paul; Richard Thorpe, Director of Manpower Programs, City of Saint Paul; Barbara Stromer, Director of the Assistance Payments Division, Department of Public Welfare; Gail Olson, Supervisor of Work Equity Project for the Department of Public Welfare; Jill Leeds Rivera, Coordinator for the Work Equity Project, Department of Economic Security; Bill

Brown, Special Assistant Attorney General, Department of Economic Security; Ron Putz, Supervisor of Management Services, Work Equity Program, Department of Economic Security; Christine Luzzie, Assistant Attorney General for the Department of Economic Security; Mary Zierdt, Project Support Supervisor, Department of Economic Security.

A total of 169 persons signed the hearing register at the hearing. Twenty-two persons presented testimony at the hearing. More than twenty timely written comments were received by the Examiner during the period subsequent to the mailing of the notice of hearing and prior to the close of the record on July 13, 1978.

Based upon all of the testimony, exhibits and written comments, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. On May 17, 1978, the Department of Public Welfare (hereinafter "the Department") filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed rules;
(b) A copy of the proposed Order for Hearing; and
(c) A copy of the proposed Notice of Hearing.

2. On May 25, 1978, the Department filed the following documents:

(a) The Order for Hearing;
(b) The Notice of Hearing as mailed;
(c) The Certificate of Delivery of the Secretary of State's list;
(d) The Affidavit of Receipt of the Secretary of State's list;
(e) The Affidavit of Mailing to persons on the Secretary of State's list;
(f) The Affidavit of Additional Mailing;
(g) The Secretary of State's list and list of additional names;
(h) The Statement of Evidence; and
(i) The Statement of Need.

The documents were available for inspection at the Office of Hearing Examiners from the date of filing to the date of the hearing.

3. On May 16, 1978, the Department mailed the Notice of Hearing to all persons and associations who had registered their names with the Secretary of State for the purpose of receiving

such notice and to all persons whose names in addition to those on the Secretary of State's list are contained in Agency Exhibit 9.

4. On May 15, 1978, a Notice of Hearing and a copy of the proposed rule were published at 2 State Register 2012.

5. On June 9, 1978, the Department filed an Amended Order for Hearing with the Hearing Examiner. The Amended Order included the dates for the hearings which had been inadvertently deleted from the original Order for Hearing.

STATUTORY AUTHORITY

7. The Department cites Minn. Stat. § 256D.04(9) (Amended, 1977) as authority for the rule. This statute requires the Commissioner of Public Welfare to issue emergency rules necessary to implement the Work Equity Program and to promulgate all rules pursuant to Chapter 15 necessary to carry out the Program so that its demonstrational qualities may be administered uniformly throughout participating counties.

8. Minn. Stat. § 256.736, subd. 2 (Amended, 1977) is also cited as authority for the rule. It requires the Commissioner of Economic Security to develop a training and employment program for each appropriate relative and dependent child receiving Aid to Families with Dependent Children (hereinafter "AFDC"), with the object of assuring to the maximum extent possible, that the relative and child will enter the labor force, accept reasonable employment, and become self-sufficient. It is noted by the Examiner that Minn. Stat. §256.736 specifically refers the Work Incentive Program (hereinafter "WIN"). The Examiner questions whether this statute, in fact, documents the authority of the Commissioner of Public Welfare to adopt this Rule 63, or is necessary to document that authority.

9. The Department cites the Food Stamp Act of 1964, 1977, 7 U.S.C. § 2011, et seq. (Amended, 1977), and 7 C.F.R. Part 93, which requires states to register nonexempt Food

Stamp recipients with Employment Services as authority for the mandatory work and registration provisions of the rule.

10. The Department also cites Minn. Stat. § 256D.11, which requires every unemployed recipient of General Assistance (hereinafter "GA") to register with Employment Services unless exempted by the provisions of subdivision 6 of that statute as authority for the mandatory work and registration provisions of the rule. Subdivision 1(a), which was added in 1977, provides in relevant part as follows:

> Every person who is a recipient of general assistance in a county designated by the commissioner for participation in the work equity program and who is not employed shall be required, unless exempt by subdivision 6, to register for and participate in the work equity program.

11. The Department also cites as authority for the mandatory provisions of the rule, Minn. Stat. § 256.736, subd. 5. That statute provides that the county welfare agency shall certify AFDC individuals who must register for employment services as a condition of receiving their grants to the Department of Economic Security. Minn. Stat. § 256.736, subd. 5 requires the Commissioner of Public Welfare to cooperate with the Commissioner of Economic Security to promote the availability of training and employment opportunities on a statewide basis.

12. There is also authority in the Federal regulations governing the administration of AFDC which are consistent with the state's mandatory registration requirement. (See, 42 U.S.C.A. §§ 630, et seq. (1974); 45 C.F.R. Part 224) These regulations outline the WIN program mandated for AFDC recipients. The Examiner has some question regarding the application of regulations governing the WIN program to WEP in the absence of specific authority.

13. The authority for participation of Food Stamp recipients in this program must be determined according to the regulations of the U.S. Department of Agriculture since no state law or rule affects the implementation of the Food Stamp program. 7 U.S.C.A. § 2014 (1977) outlines the work requirements for Food Stamp recipients. The Department of Public Welfare

administers the Food Stamp program in the State of Minnesota pursuant to Federal regulations which require each able-bodied person between the ages of 18 and 65 to register for employment unless they are specifically exempt. [See, 7 C.F.R. § 271.3(d)] Extensive comment was submitted by St. Cloud Legal Services on the issue of whether participation by Food Stamp recipients violates the Federal Administrative Procedures Act.

14. The Examiner finds that the Department has documented its authority to promulgate the proposed rule.

DISCUSSION OF THE RULE AS PROPOSED

15. Section A.1. of the rule sets forth the purpose of the Work Equity Project, the statutory and regulatory authority for the project, and other statutes and rules with which the proposed rule is to be read in conjunction. Testimony at the hearing dealt, in part, with the philosophical controversy surrounding the merits of the Work Equity Project as a demonstration project. The Department has determined that it is appropriate to test the unification of work requirements and programs for recipients. Rule 63 deals with the method for implementing that decision. The Department also noted that Minn. Stat. § 256.01, subd. 2(13) limits the experimental demonstration program to two years. This specific limitation was requested by representatives of certain counties. The Examiner finds that Section A.1., as proposed, is reasonable and necessary to provide a common understanding of purposes of the Work Equity Program and those rules and regulations with which it must be considered.

16. Section A.2. provides that the rule is binding on the Department and the Department of Economic Security (hereinafter "DES"), as well as, all county welfare and human services boards, applicants and recipients as defined in the rule. The Examiner notes that the current lack of punctuation in this portion of the rule makes it somewhat difficult to understand. However, the Examiner finds that this section is reasonable and

necessary to provide a common understanding of those persons and agencies upon whom the rule is binding.

17. Section A.3. provides that the Commissioners of the Department and DES shall issue handbooks and informational materials to local welfare agencies, local offices of the Department of Economic Security and the Prime Sponsors, and to people referred to WEP in order to implement the rule in an orderly and uniform manner. Mr. Echola gave testimony recommending the use of bilingual information for project participants. The Institutional Review Board required the use of such bilingual information. Based upon those comments, the Department proposes to add the following sentence to the end of Section A.3.:

> For those participants whose primary language is not English, translation services shall be made available at all phases of an individual's participation in WEP.

The Examiner does note that it would seem more logical to provide translated copies of such handbooks to recipients rather than or in addition to translation services. However, the proposed section, as amended, is reasonable and necessary to insure a uniform understanding of the workings of WEP.

18. Section B. of the rule deals with administration. Section B.1. indicates that WEP is designed to extend the scope of services available through WIN, the General Assistance Work Program and Food Stamp work registration. This section of the rule provides that in those counties selected for participation in WEP, the rule shall be read in conjunction with DPW Rules 44, 45 and 202. The rule, as originally proposed, provides that any differences shall be resolved in favor of the rule. The Department proposes the following amendment to the second sentence of the rule:

> In those counties selected by the Commissioner of DPW for participation in WEP, this rule shall be read in conjunction with DPW 44, 55 and 202; any <u>irreconcilable</u> differences shall be resolved in favor of this rule.

The amendment was made because the language more accurately reflected the agency's intent with regard to treatment differences between Rule 63 and any other rules. The Examiner finds that this section, as proposed and amended, is reasonable and necessary.

19. Section B.2. of the rule provides that WEP shall combine the efforts and resources of the Department, DES and the City of St. Paul to provide appropriate employment or training for designated public assistance applicants and recipients and shall operate in conjunction with the Saint Paul and Minnesota Balance of State Prime Sponsors designated pursuant to CETA. There was no comment on this section. The Examiner finds that this section, as proposed, is necessary and reasonable in order to describe the joint administration of the project.

20. Section B.3. further explains the relationship for the joint administration of the WEP project by the Department, DES, St. Paul CETA Prime Sponsor and the Balance of State CETA Prime Sponsor. Mr. Laycock suggested that the rule should require specific agreements between the local welfare agencies and WEP centers, as are required between the agencies. The Department takes the position that the nature of the existing fiscal systems and obligations established by the statute render it unnecessary to provide for local agreements. Ms. Baciak and Ms. Boyle recommended that client and county representatives be included on the management board. It is the position of the Department that it is appropriate for the Board to contain only agency representatives with the capacity and responsibility for administering the program. The Examiner finds that this section, as proposed, is necessary and reasonable.

21. Section B.4. provides that WEP shall provide all services traditional to WIN and increase opportunities for training and jobs available to additional numbers of public

assistance recipients. Subsequent to the hearing and prior to the close of the record, the agency proposed to amend B.4. as follows:

> WEP shall provide all WIN services ~~traditional to WIN~~ and shall increase the opportunities for training and jobs available through a work incentive program to additional numbers of public assistance recipients.

In its Statement of Need, the Department states that B.4. is intended to provide that WEP will guarantee all the statutory, regulatory and administrative requirements of the WIN program unless specifically waived. Although the Examiner believes that Section B.4., as stated, is necessary and reasonable, the language used does not convey the meaning stated in the Statement of Need. Therefore, if that is the intent of the Department, Section B.4. should be amended to conform with that intent. The Examiner finds that the Section B.4. as proposed is necessary and reasonable.

22. Section B.5. permits the Commissioner of Public Welfare to select those counties who shall participate in WEP and to administer that participation. Comments by Messrs. Van Diest, Serrano and Gibbens suggested that participation by any county should be voluntary. Messrs. Van Diest, Serrano and Strei recommend that participating counties be allowed to withdraw from the project upon reasonable notice of up to 90 days. It is the position of the Department that participation should not be optional in order to permit the Commissioner to complete the demonstration and to respond to future conditions. The Department's position is that the withdrawal policy would be acceptable, but would be a matter of internal management rather than rulemaking. The Examiner believes that withdrawal policy should be included in the rule because it falls within the definition of Minn. Stat. § 15.0411, subd. 3, and is not a matter of internal management policy. The Examiner believes that the Department has failed to demonstrate why it is either necessary or reasonable for participation by the counties to be mandatory

rather than optional. The Examiner finds that the portion of this section dealing with mandatory participation is neither necessary nor reasonable based on the record herein. The Examiner finds the remaining portions of this section to be necessary and reasonable.

23. Section B.6. prohibits the use of WEP funds for any political activity in accordance with CETA regulations. This prohibition includes any voter registration activity, any activity providing voters with transportation to the polls, and any assistance or participation in an election for public or party office or with regard to lobbying in a matter of public issue. Mr. Gamboni, Minnesota Coalition for Welfare Reform, objected to this limitation on the use of WEP funds. The Department takes the position that this limitation is in conformity with CETA regulations which are operative in this program. The Examiner finds that this section of the rule, as proposed, is reasonable and necessary.

24. Section B.7., also known as the "hold harmless clause", provides for reimbursement to local welfare agencies by WEP of any increased cost resulting from the operation of WEP and requires those counties to provide the Department with information necessary to determine whether costs have increased. The statutory basis for this section is found in Minn. Stat. § 256D.11, subd. 4. Reimbursements will be made on a quarterly basis. At the hearing, Messrs. Van Diest, Serrano and Strei requested that local agencies be guaranteed the hold harmless provisions, and that the hold harmless formula be specifically incorporated into the rule. It is the position of the Department that inclusion of the hold harmless provision is in the nature of a guarantee and that funds are being held in reserve to cover those increased expenditures. It is the Department's position that the formula itself is an internal management policy and is not an appropriate subject for rulemaking. Mr. Laycock, Swift County Welfare Board, suggested that Section

B.7. be amended to specify coverage of 100 percent of increased costs. The Department takes the position that the section intentionally contains no qualifications to the extent of reimbursement. However, the Examiner finds it difficult to understand whether it is the position of the Department that no qualification is needed because the rule clearly provides for 100 percent reimbursement, or that no qualification is needed because the Department does not wish to be bound to a specific percentage of reimbursement. The Examiner would suggest that this section of the rule is far too vague and should be amended. However, the Examiner also finds that this section, if clarified, is reasonable and necessary.

25. Section B.8. provides any income maintenance funds which are not expended by local welfare agencies as a result of a recipient's participation in WEP shall be diverted to WEP in accordance with procedures to be determined at a later time. Following the hearing, the Department submitted the following amendment to the rule as proposed:

> 8. Income maintenance funds which are not expended by local welfare agencies as a result of a recipient's participation in WEP shall be diverted to WEP, in accordance with internal management procedures to be established by DPW and DES. . . .

This addition was to clarify the Department's position that the procedure for determination of the formula is an internal management matter not subject to Minn. Stat. § 15.0412, subd. 3. The Examiner finds this section, as amended, to be reasonable and necessary.

26. Section B.9. provides that WEP shall not deny any person his or her civil rights and shall be bound by the Minnesota Data Privacy Act, Minn. Stat. § 15.0162, et seq. (Amended, 1978) and relevant federal regulations. In the course of the hearing, a substantial amount of testimony and comment was directed to the relationship of the research firm, Abt Associates, which is evaluating the program and the participants. Based upon that testimony, the Department proposes to add the following language to Section B.9.:

> If any participant is requested to supply information to an outside evaluation group or individual evaluating, critiquing or monitoring WEP or its participants or the affect of WEP on its participants, or if an individual is requested to submit to any testing or interviewing by such group or individual, the participant shall be fully informed that participation is voluntary and shall be fully informed that refusal to participate in the evaluation shall not result in deregistration from WEP or disqualification from public assistance benefits. Prior to requesting information for this purpose, the evaluation group or individual shall obtain the participant's informed consent. The evaluation group or individual shall use the information acquired solely for the purposes explained to the participant at the time the consent was obtained, and as permitted by law.

In response to additional comments with regard to protection of the privacy of recipients' records, the Department notes that the WEP Operations Manual discusses at length the statutory limits on sharing information between county welfare staff and WEP, and between WEP and potential employers. The Examiner finds that this section, as amended, is reasonable and necessary.

27. Section B.10. provides that the administration of WEP is subject to changes in state or federal law and establishes which Commissioner shall be responsible for notification of various components with regard to such changes. There was no comment on this section of the rule, and the Examiner finds that it is both reasonable and necessary.

28. Section B.11. provides that the operation of WEP is subject to approval by the United States Department of Health, Education and Welfare, the Department of Agriculture and the Department of Labor, as well as being contingent upon obtaining sufficient funding from the Department of Labor. The copy of the proposed rule filed with the Examiner states at the last sentence as follows:

> The Prime Sponsors shall give prompt notice to each participant of the project's termination and shall make every reasonable effort to assist each

The Examiner notes that the amended version of the temporary rule reads as follows:

> The Prime Sponsors shall give prompt notice to each participant of the project's termination and shall make every reasonable effort to assist each participant to obtain substitute services.

The Examiner suggests that the proposed rule should be amended so that the final sentence is a complete sentence. Subject to that change, the Examiner finds this section, as proposed, to be reasonable and necessary.

29. Comments made at the hearing, written comments following the hearing and the report of the Institutional Review Board all indicate that a system of advocates should be added to the rule. Therefore, the Department proposes to add the following section to the rule:

> B.12. Work equity shall contract with, or obtain voluntary assistance from, outside agencies, groups, or individuals, to provide advocacy services at each WEP Center. With the consent of the participants, one or more advocates shall be present at each group orientation to inform participants of the availability of advocacy services. Literature or forms provided to participants which mention the WEP grievance and adjudication system shall state that participants are entitled to the assistance of an advocate.

The Examiner finds that this addition to the rule is necessary and reasonable in order to insure that the rights of WEP participants are protected.

30. Section C. of the rule deals with definitions which are necessary in order to provide a common understanding of the meaning of the rule. There was no comment at the hearing with regard to the following subsections of Section C. which are found to be reasonable and necessary: 1-4; 6-16; 19-22; 24-28; 30-42; 44; 46; 47; 49; 53; and 54.

31. Section C.5. defines "Classroom Training (CT)" to include vocational or other institutional training including basic or remedial education, conducted in a non-worksite setting. Comments by the Client Sector Advisory Task Force and the Business, Labor and Agency Advisory Task Force (hereinafter "the Task Forces") suggest that the following be added to the definition of Classroom Training:

> Training will be short-term with the immediate goal as work employability, however, support will be given to participants with longer range educational goals.

The rationale behind this proposed amendment is that the definition should help participants obtain clearer expectations of the program.

32. Section C.17. defines "Employability Services". The Department proposed to amend Section C.17. in order to improve its clarity as follows:

> Employability Services: Employment and training services provided by the WEP Center to improve the work skills <u>of</u> a participant and aid him/her to find employment.

The Examiner finds that this section, as amended, is reasonable and necessary.

33. Section C.23. defines "Hearing Officer" as the hearing officer designated by DES to hear and decide or make recommendations on issues relating to grievances and sanctionable issues involving WEP participants. The Task Forces proposed that "Hearing Officer" should be changed to "WEP Hearing Officer" and that the definition should be expanded to show how such a person differs from a Welfare Appeals Referee, defined in Section C.50. It was felt that this amendment would provide greater clarity. Subsequent to the hearing, the Department proposed to amend Section C.23. to read as follows:

> Hearing Officer: The hearing officer designated by DES to hear and ~~decide or~~ make recommendations <u>to the Commissioner of Economic Security</u> on issues relating to grievances and sanctionable issues involving WEP participants.

The Examiner finds that this section, as proposed and amended, is reasonable and necessary.

34. Section C.29. defines "Management Board". Ms. Baird suggested adding language to define the WEP local director. It is the position of the Department that this change is not necessary. The Examiner finds that this section, as proposed, is reasonable and necessary.

35. The Department proposes to add a definition for "Suitable Employment" in order to meet criticisms raised by Ms. Baum and Mr. Gamboni. This definition will replace the current Section C.42. and all definitions subsequent to that will be renumbered. The definition which the Department proposes to add is:

> Suitable Employment: Employment consistent with the participant's employability plan; meets the criteria stated in Section I of the rule.

The Examiner finds that this section, as amended, is reasonable and necessary.

36. Section C.44. (remaining sections referred to under the new numbering system) defines "Support Services Staff" as counselors from local welfare agencies or WEP Center offices who provide support services to WEP applicants or recipients. In written comments submitted by Mr. Serrano a definition of support staff was requested. The Department responded that the Support Services Staff defined under C.44. is the same as the separate administrative unit workers which are defined in WIN. The Department also notes that they did not specify precise support service staffing so that existing local variations and preferences may be accommodated. The Examiner finds the section, as proposed, to be reasonable and necessary.

37. Section C.45. defines "Transfer" as the period during which the participant is assigned to active participation in a program other than WEP as part of an approved WEP employability plan. Comments from the Task Forces indicate that the word "Transfer" should be changed to "Suspension" to conform with the language in the WIN Handbook. The Examiner finds that the proposed section is reasonable and necessary.

38. Section C.48. defines "Wage Component" as an activity such as public service employment, on-the-job training and community work projects whereby a participant performs work for specified hours, and is paid wages and benefits. In comments, the Task Forces suggest that the language be amended as follows for greater clarity:

> Activity whereby a participant performs work for specified hours and is paid prevailing wages (per I.2.b.) and benefits.

The Examiner finds that the rule, as proposed, is reasonable and necessary.

39. Section B.50. defines "Welfare Appeals Referee". Post-hearing comment by the Task Forces suggest that this definition should be modified so as to specifically distinguish the Welfare Appeals Referee from the Hearing Officer defined at Section C.23. The Examiner finds that the proposed rule is reasonable and necessary.

40. Section C.51. defines a "WEP Center" as a field office of a Prime Sponsor from which WEP services are administered. In written comment, Mr. Serrano recommended that WEP Centers provide local offices convenient to residents and Mr. Strei recommended a 30-mile limitation. It is the position of the Department that the centers currently designated in St. Cloud, Mora, Montevideo, and St. Paul accurately reflect the density of participant populations. The Department also indicates that more localized sites and itinerant services are planned, but that establishing additional separate centers at this time would increase administrative costs and divert project funds needed for client services. The Department also notes that the exemption criteria in Section D.25. exclude those persons having more than two hours of daily travel. On this basis, the Department will not amend the rule. The Examiner finds the definition, as proposed, is reasonable and necessary.

41. Section C.52. defines "WEP Center Staff" as Prime Sponsor staff in a WEP Center, or satellite office thereof, part or all of whose time is compensated by WEP funds and staff from other agencies assigned to work in a WEP Center in performing WEP functions. At the hearings, concern was expressed about the responsibility for hiring and firing of staff for the project. WEP Center staff are being hired by DES and costs and staffing problems upon termination of the project will be the responsibility of DES. The Examiner finds the proposed section is necessary and reasonable.

42. Comments submitted by the Minnesota Recipients Alliance suggest the addition of the following definitions: Job Search; Job Ready; Good Cause; Prevailing Wage; For Cause; Job Barrier; Appropriate Employment. Comments received from the Task Forces suggest the addition of definitions for: Prevailing Wage; Job Search; Job Ready; Good Cause; Employment Barriers; Appropriate Work; Job Displacement; Program in Progress; On Strike; Lock out; and Lay Off.

43. Section D. of the rule deals with the participation of AFDC and GA applicants and recipients. Section D.1. provides that all AFDC and GA applicants and recipients eligible for WEP shall be informed of its availability and shall register for WEP unless exempt or otherwise excluded from registration by the Commissioner of Public Welfare. Subsequent to the hearing, the Department proposed the following changes to the rule:

> 1. All AFDC and GA applicants and recipients eligible for WEP shall be informed of its availability by the local welfare agency and shall register for WEP unless exempt or otherwise excluded from registration by the Commissioner of Public Welfare because of program or budgetary constraints.

It is the position of the Department that these amendments will clarify responsibilities within the project and more clearly defines agency standards for exclusion of persons from registration. The Examiner finds that this section, as amended, is reasonable and necessary.

44. Section D.2. defines which AFDC applicants and recipients shall be exempt from WEP registration and is necessary to establish standards. The Department proposes to add, "The local welfare agency shall determine exemptions." as the first sentence of D.2. This would clarify responsibilities in WEP.

Section D.2.a. provides that children under 16 shall be exempt.

Section D.2.b. provides that children age 16 through 18 attending school full-time shall be exempt. Messrs. Van Diest, Sykora and Strei recommended that children age 16 through 18

should be exempt only if attending high school. It is the position of the Department that adopting the proposed change in the language would require a waiver of federal regulations. Such a waiver has not been obtained. The Department notes that Minn. Stat. § 256.12, subd. 14, permits AFDC eligibility to continue to age 19 so long as the individual remains in school. Under GA work requirements, authority exists to exclude individuals engaged in a range of vocational educational or treatment programs subject to the approval of the local welfare agency (Minn. Stat. § 256D.11, subd. 4). The proposed rule limits this discretionary authority in the interest of uniform administration of the project and equitable treatment of all participants.

Subdivision D.2.c. exempts persons who are ill. The Examiner finds that this language is not clear. Further definition is needed in order for persons to determine the meaning of "ill".

Section D.2.d. provides an exemption for persons who are incapacitated. It also provides that AFDC recipients whose WEP exemption is based on incapacity shall be referred to the Division of Vocational Rehabilitation and the Department of Economic Security. The Examiner believes that further definition of "incapacitated" should be included to clarify this section.

Section D.2.e. provides an exemption for persons over 65. Comment by Messrs. Van Diest and Strei recommend that individuals under age 62, rather than 65, be exempt from work and training requirements. Mr. Serrano recommended age 60. The Task Forces report also recommends that Section D.2.f. be amended by changing persons over 65 to persons over 60. The Department notes that 65 is the standard age established in 45 C.F.R. 224.20(b)(5) for AFDC recipients and at 7 C.F.R. 271.3(d) for Food Stamp recipients. DPW Rule 55, dealing with General Assistance, defines advanced age as 65. It is the position of the Department that age 65 should be used for uniformity and since it was not possible to

obtain a waiver for Food Stamp recipients covered by WEP. Section D.2.f. exempts persons who live so far away from their WEP Center or placement that more than two hours per day would be required to travel by reasonably available public or private transportation to and from work or training unless such commuting time is normal to the community. This time is exclusive of time necessary for transporting children to or from child care. The Task Forces report suggests that this section be changed such that travel time is inclusive of the time necessary for transporting children to or from child care. This is based on the rationale that it is not in the best interests of any child to be out of his or her home longer than 10 hours per day. The Examiner suggests that serious consideration be given to this comment.

Section D.2.g. exempts persons whose presence in the home is needed because of the illness or incapacity of another person in the household. The report of the Task Forces proposes that this exemption be amended to read as follows:

> Persons whose presence in the home is needed for compelling reasons, for example because of the illness or incapacity of another person in the household; or temporary exemptions for size or age of family, stress situations, or special needs of the family.

The amendment is suggested in order to permit the program to meet the unique needs of the participants. The Examiner suggests that serious consideration be given to this amendment.

Section D.2.h. provides one exemption per household for AFDC caretaker of a child under 6, or a GA caretaker of a child under 18. Written comments suggested that the exclusion for caretaker parents be limited to program participants with children under age 6, the present AFDC requirement. This suggestion was also made by the Task Forces. It is the position of the Department that the Food Stamp and General Assistance participation criteria deal with age 18 and that, in light of the controversy surrounding the age criteria, the rule as written is appropriate.

Section D.2.i. provides an exemption for the spouse of a WEP or WIN registrant. Written comment suggested that the spouse of a registrant should be exempt only if there is a child under age 6. The Task Forces suggest that Item i. should be omitted entirely because both spouses ought to be treated alike if the home has two employable people and all children over age six. It is the position of the Department that inclusion of the exemption is a reasonable method of distributing limited project resources to the greatest number of families, rather than just individuals.

Section D.2.j. exempts persons receiving GA who are working at least 30 hours per week at a wage consistent with that paid in the community for similar work. It was suggested by Mr. Laycock that AFDC clients who are employed or in training programs should be exempt from the project. This would be in accordance with other sections which exempt GA and FS recipients. It is the position of the Department that non-exemption of such AFDC recipients reflects an effort to provide similar AFDC populations for the comparison of the effects of the WIN and WEP programs.

Section D.2.k. provides an exemption for persons who are registered in WIN and are in a suitable employability development plan.

Section D.2.l. provides that persons receiving general assistance who have been referred to or applied for work training, work experience, or similar program may be exempted if the waiting period for acceptance into the program does not exceed 30 days.

The Task Forces recommend the addition of an Item n. as a number to Section D.2. The Examiner notes that there is no Item m. and assumes that the suggestion would be equally applicable to that section. The proposed additional item is as follows:

> Temporary exemptions shall be reviewed at least every 90 days.

This addition is based on the rationale that it is necessary to set a realistic limit as to when temporary exemptions should be re-evaluated. Quarterly re-evaluation would be consistent with AFDC policy and needs to be clearly outlined in the rule.

The Examiner finds that Section D.2. of the rule, as proposed, is reasonable and necessary.

45. Section D.3. provides that all General Assistance and AFDC recipients who are mandated to or volunteer to register with WEP shall be referred to the local WEP office by the local welfare agency, which shall insure the transportation to and from registration is available. Written comments by the Task Forces suggest that this portion of the rule be amended to read as follows:

> All GA and AFDC recipients who are mandated to or volunteer to register with WEP shall be referred for registration to the local WEP office by the local welfare agency. WEP will reimburse for both transportation and child care costs as needed. WEP offices shall be located at convenient sites.

The rationale behind this proposed amendment is the counties have not budgeted monies to meet this added expense and that this provision is particularly relevant in rural areas where distance is great and transportation is lacking. Comments by Mr. Serrano indicate that he would like to have the requirement deleted and have transportation needs met elsewhere. The Department's response indicates that the local welfare department is in contact with the client at the beginning of the registration process and has resources available to meet the transportation need. Furthermore, costs of transportation would be subject to reimbursement under Section B.7. On this basis, the Department declines to amend the rule. The Examiner finds that the rule, as proposed, is reasonable and necessary.

46. Section D.4. deals with voluntary registration of AFDC and GA recipients who are otherwise exempt. The Department proposes to amend this section as follows:

4. AFDC and GA recipients exempt from WEP registration may voluntarily register with WEP, unless the Commissioner of Public Welfare limits participation of volunteers because of program or budgetary constraints. ~~WEP may exclude from participation individual GA volunteers whose barriers to employment preclude them from obtaining gainful employment during the existence of WEP.~~

The intent of this revision is to clarify agency policies or standards upon which the Commissioner may limit volunteer participation. Mr. Strei suggests that volunteering unemployed fathers be limited to 10 percent of the county's registered case load in any given month because he is concerned about the attraction of higher benefits available through WEP. The Department states that the amendment is unnecessary because: (1) initial eligibility for AFDC-UF requires that the father not have left employment without good cause in the prior 30 days; (2) because few unemployed fathers will be in the voluntary category; and (3) because the WIN standards for accepting suitable private sector employment pursuant to 45 C.F.R. 224.34(b)(3) remain in effect. In addition, the Task Forces suggested that a provision be added to this section indicating that denial may be subject to appeal. The rationale behind the suggestion is that volunteers should have access to the appeal process as well as mandatory participants. The Examiner finds that the proposed section, as amended, is reasonable and necessary.

47. Section D.5. sets forth the standards for treatment of income for AFDC and GA WEP participants. These sections generally provide: (1) that WEP payments of not more than $30 per week shall be disregarded in determining the grant amount for WEP participants; (2) that reimbursement for actual cost of training related expenses shall be disregarded as income for WEP participants; and (3) that wages shall be considered as earned income and that all other income shall be handled in accordance with DPW Rules 44 and 45. As a result of comment at the hearing, the Department proposed to add Section D.5.f. as follows:

AFDC unemployed fathers who are registered with WEP shall be exempted from the 100 hour per month employment limitations.

The purpose behind specifically lifting this limitation is to allow acceptance of lower wage suitable employment and participation in the work projects on a full-time basis. At the hearing, Mr. Van Diest recommended that the eligibility limit of 100 hours employment per month ought to be incorporated into the rule. It is the position of the Department that to do so would be to delete one of the important substantial changes contained in WEP as compared to existing programs. The Examiner finds that this amendment is reasonable and necessary.

48. The Department proposed to add Section D.5.g. in order to clarify that money received by a participant for taking part in an outside evaluation will not affect the grant amount. The section to be added provides as follows:

> D.5.g. An amount paid to a participant for taking part in an outside evaluation as described in B.9. shall not be counted in determining public assistance grant amount.

The Examiner finds that this section, as amended, is reasonable and necessary.

49. Section E. deals with the participation of Food Stamp recipients. Section E.1. deals with the determination of eligibility for and dissemination of information regarding WEP among Food Stamp recipients. The agency proposes to amend the section as follows:

> 1. Eligibility for the food stamp program shall be determined by the local welfare agency according to applicable federal law. All food stamp applicants or recipients eligible for WEP shall be informed of the program's availability <u>by the local welfare agency</u>.

The amendment is intended to clarify the responsibility for dissemination of information. The Examiner finds that the proposed section, as amended, is necessary and reasonable.

50. Section E.2. deals with registration requirements for Food Stamp recipients. The Department proposes to amend Section E.2. to read as follows:

> An individual receiving food stamps who is required to register with the job service in the Department of Economic Security shall be referred to WEP on a timely basis after 30 days of the job service registration <u>by the job service office</u>, unless WEP exempt. . . .

WEP exempt status shall be reviewed monthly thereafter by the job service and individuals who become non exempt shall be referred to WEP on a timely basis.

The Examiner finds that the Section, as proposed and amended, is reasonable and necessary.

51. Section E.3. sets forth additional requirements with which Food Stamp recipients who are referred to WEP must comply. It should be noted that Food Stamp recipients may not be required to participate in training or training related components as there is no statutory authority for their participation. The Examiner finds that the proposed section is reasonable and necessary.

52. Section E.4. permits voluntary registration with WEP by Food Stamp recipients. The Department proposes to amend E.4. as follows:

> 4. Food stamp recipients exempt from WEP registration may voluntarily register with WEP, unless excluded from registration by the Commissioner of Public Welfare because of program or budgetary constraints and shall be referred to the local WEP office by the local job service office.

The intent of the amendment is to set forth the policies or standards by which the Department shall operate in this area. Comments submitted by the Task Forces indicate that this section should also permit denial to be subject to appeal so that volunteers and mandatory participants may have equal access to the appeal process. The Examiner finds that this section, as proposed, is reasonable and necessary.

53. Section E.5. provides that Food Stamp recipients who are exempt from job service registration may also voluntarily register with WEP. The Department proposed to amend that section as follows:

> 5. Food stamp recipients exempt from the job service registration may voluntarily register with WEP, unless excluded from registration by the Commissioner of Public Welfare because of program or budgetary constraints, and shall be referred directly to the local WEP office by the local welfare agency.

The purpose of the amendment is to indicate the standards or policies by which the Department shall be bound in the implemen-

tation of the rule. The Task Forces suggest that language be added to this section which also provides that denial may be subject to appeal in order to permit volunteers and mandatory participants equal access to the appeal process. The Examiner finds that this section, as amended, is reasonable and necessary.

54. Section E.6. provides that Food Stamp recipients, otherwise exempt from WEP registration, may voluntarily register. The Department proposes to amend that section as follows:

> E.6. Food stamp recipients exempt from WEP registration may voluntarily register with WEP, unless the Commissioner of Public Welfare limits participation of volunteers because of program or budgetary constraints. ~~WEP may exclude from participation individual volunteers whose barriers to employment preclude them from obtaining gainful employment during the existence of WEP.~~

The section, as amended, specifically provides the policy or other limitations upon which the Department may act. Comments by the Task Forces suggest that a provision be added providing that denial may be subject to appeal. The Examiner finds that this section, as amended, is almost identical to E.4. and, thus, is unnecessary.

55. Section E.7. provides that a person who become ineligible for Food Stamps because of excess income attributable to mandatory participation in WEP may continue in WEP until placed in permanent unsubsidized employment. The purpose of this section is to prevent termination of WEP participation with loss of Food Stamps which could result in an endless cycle of unemployment and reapplication. The Examiner believes that the section, as proposed, is reasonable and necessary.

56. Section E.8. defines an individual with a job attachment. The Task Forces note that the rule should define "on strike", "lock out" and "lay off" in order to be more clear. The Examiner believes that this suggestion is well taken. This section, as proposed, is reasonable and necessary.

57. The Department proposes to add Section E.9. to clarify the fact that a Food Stamp recipient's eligibility is not affected

by receiving payment for participation in an outside evaluation of the WEP project. The addition is as follows:

> E.9. An amount paid to a participant for taking part in an outside evaluation described in B.9. shall not be counted in determining Food Stamp eligibility.

The Examiner finds that this amendment is both reasonable and necessary.

58. Section F. deals with exemption determination disputes. Section F.1. provides that all applicants and recipients of AFDC, GA and Food Stamps must be informed of their right to contest determination of WEP non exempt status. It provides that if a dispute arises between an individual and the agency regarding a determination of non exempt status, the agency determination is binding on the individual. If, however, the individual requests a hearing on the issue, as provided by the rule, he/she shall be considered exempt until the status is determined. The Examiner believes that the thrust of this section of the rule is to indicate that an unappealed agency determination is binding, and that an appeal permits consideration of the party as exempt. However, the Examiner believes that the language of this section is not clear and suggests amendment of it. At the hearing, it was suggested by Ms. Baird that the rule be amended to include references to specific legal services available when a client disputes his or her status. The addition of Section B.12. by the Department responds to that concern. The Examiner finds that this section, as written, is reasonable and necessary.

59. Section F.2. deals with determination of non exemption on the basis of incapacity or illness. The Institutional Review Board recommended that Section F.2. should state more specifically who would pay for the cost of medical verification. The Department proposes to amend this section of the rule by adding a sentence as follows:

> F.2. . . . of the determination. <u>WEP shall arrange to cover the cost to the individual of obtaining the medical verification.</u> If the individual. . . .

60. Section F.3. sets forth the procedure to be followed if WEP Center Staff believes that an individual referred as mandatory should be exempt. The purpose of this section is to provide a mechanism by which the WEP Center Staff may initiate necessary procedures for determining exempt or non exempt status. The Department proposes to amend this section as follows:

> If, after referral, WEP Center Staff believes an individual referred as "mandatory" should be exempt. WEP shall ~~should~~ register the individual and then state the reasons in writing to the referring officer and request a review of the case.

The Examiner finds that this section, as amended, is reasonable and necessary.

61. The Department proposes to amend the rule by adding Section F.4. as follows:

> The responsibilities of the agencies described in sections F.1. and G.1. shall include the information that the participants shall receive without cost medical evaluations necessary to determine whether an aspect of project participation is inappropriate for medical or health reasons. Brochures and posters containing such information shall be developed and used including those directed toward women who are or may be pregnant.

This amendment is one of the changes required by the Institutional Review Board as a condition for approval of the program. The Examiner finds that the section, as amended, is reasonable and necessary.

62. Section G. sets forth the registration procedures for all potential WEP participants. It requires these procedures to be completed within three working days of the date the individual appears for registration. Section G.1. provides that all participants must be informed about the WEP program and requirements. The Task Forces report proposes the following amendment:

> 1. Inform all participants about the WEP program and requirements as well as about the availability of the WEP rule, laws, regulations and operating procedures manuals and brochures which explain them simply.

The rationale behind this proposed amendment is that participants

and potential participants will be able to more fully utilize the various WEP components with the relevant laws, regulations and procedures openly accessible. The Examiner finds that this section, as proposed, is reasonable and necessary.

63. Section G.2. requires a work history to be obtained from each applicant. This section is reasonable and necessary.

64. Section G.3. deals with job market information which must be provided to the applicant. This section is reasonable and necessary.

65. Section G.4. provides that WEP Center Staff must notify the referring office within three days of registration that registration has been completed. The Examiner finds that this section, as proposed, is reasonable and necessary.

66. Section H. of the rule deals with appraisal and certification. The Department has proposed to add a section to Section H. of the rule to be known as Section H.1., and should renumber all following sections. The amendment which is proposed is as follows:

> All psychological, psychiatric, family or mental health counseling and services, including associated testing, shall be voluntary. Participants using services or testing shall be fully informed of the scope, nature, and use and shall sign an agreement that acknowledges their voluntary use of the services. This provision applies to appraisal interviews described in the section, employability plans described in section 3 following, Employability Development Planning in section M.1. and support services in O.1.c.
>
> The type of vocational tests approved by the Department of Labor and administered in the work equity centers include:
>
> 1. The Stanford Achievement Test;
> 2. The General Aptitude Test Battery;
> 3. The Minnesota Importance Questionnaire;
> 4. The Kuder Preference Record;
> 5. Autobiographical Sketch;
> 6. Non Verbal Aptitudes Test B; and
> 7. Basic Occupational Literacy Test.

The addition of this section was the result of testimony by Ms. Baird and the recommendation of the Institutional Review Board about the necessity for providing for testing and counseling within the program. The Examiner finds that the section,

as amended, is necessary and reasonable.

67. Section H.2., formerly H.1., provides that all participants will be appraised in the order in which they are registered, except for AFDC unemployed fathers who must be appraised within two weeks of registration with WEP and certified no later than 30 days after registration. There was comment at the hearing criticizing the special requirements for AFDC unemployed fathers. Similar comments were submitted by the Task Forces. The Department responds that 45 C.F.R. 224.22(b) requires priority appraisal of unemployed fathers. The Examiner finds that the section as submitted is reasonable and necessary.

68. Section H.3., formerly H.2., provides for an appraisal interview by WEP Center Staff for the purposes of assessing the registrants' employability potential and need for support services. The Examiner finds that this section is both reasonable and necessary.

69. Section H.4., formerly H.3., deals with the employability plan. Following the hearing and based upon comments by the Institutional Review Board, University of Minnesota Law Clinic and Ms. Baird, the Department proposes to amend Section H.4. as follows:

> The employability plan shall contain an employment and training services section and a support services section, and shall be designed to lead to ~~a definite unsubsidized job goal~~ employment and ultimately to self-support and shall contain a definite employment goal attainable in . . . .

The Task Forces report suggests that the language "attainable in the shortest time period" should be deleted because it is necessary to strike a balance between immediate employment and enhancement of skills. The Task Forces report also suggests that the second to the last sentence in Section H.4. should be amended to read as follows:

> The employability plan shall be developed jointly by the participant and WEP staff including support service staff. The support service staff should include a client's advocate whose sole responsibility is seeing that the client's needs and views are being represented in his or her absence.

The purpose of this proposed amendment is to insure that the views of the participant are being represented at all stages of the proceeding. The Examiner finds that this section as proposed to be amended is reasonable and necessary.

70. Section H.5., formerly H.4., requires support service staff to certify that necessary immediate and ongoing support services have been provided or arranged for each participant or that no such services are required. The Examiner finds that this section is reasonable and necessary.

71. Section H.6., formerly H.5., deals with the support services. The Department proposes to delete this section in its entirety and to substitute the following:

> Support services: Until a participant is certified, only pre-appraisal and appraisal services shall be provided by the WEP support service staff. The participants shall be certified before receiving WEP support services, listed in section "O" of this rule. A WEP participant shall be certified at any time that support services are needed, and additional certifications shall be done as needed. After certification a participant who is not employed shall receive certified support services until successful completion of his/her EP. Upon entering employment (either unsubsidized or subsidized), WEP support services shall be provided for a period of 30 days. Such services shall continue for 90 days if they are necessary for the participant to continue such employment. In an emergency, such services shall be provided for an additional 30 days beyond the 90 days if the same are necessary for the participant to continue such employment.

The proposed amendment is made to Section H.6. in order to more clearly specify the policies and standards which are being used by the agency.

The Task Forces suggest adding a sentence as follows:

> Participation of WEP enrollees in support service activities is voluntary and should involve informed consent.

The rationale of this proposal is that voluntary participation and support services provide protection against WEP becoming more than an employment program. It is also thought that requiring informed consent assists the recipients in becoming self-sufficient and being involved in the decision making process.

The Examiner finds that this section, as amended, is necessary and reasonable.

72. Section H.7., formerly H.6., provides that welfare benefits shall not be denied by reason of the individual's referral to a job, to WEP, or by reason of an individual's participation therein. The Examiner believes that the language in this section could be more clear, but finds that it is necessary and reasonable.

73. Section I. deals with appropriate employment and training criteria. Section I.1. sets forth the standards for employment and training assignments and provides that WEP participants must accept assignments to employment or shall be subject to deregistration.

Section I.1.a. provides that any employment or training assignment must be within the scope of the individual's employability plan. The Department proposes to amend Section I.1.a. to read as follows:

> . . .<u>final</u> approval of the employability plan rests <u>with</u> the WEP center staff. . . .

This section of the rule also provides that if the participant disagrees with a decision, he or she may initiate a grievance.

Section I.1.b. provides that the job or training assignment must be related to the capability of the individual to perform the task on a regular basis. Any claim of adverse affect on mental or physical health shall be verified by a physician or a licensed or certified psychologist. This section also provides that pending verification the participant shall be assigned to the EDP component as defined in Section M.1. of the rule.

Section I.1.c. provides that the total daily commuting time from home to assigned work or training site and return shall not normally exceed two hours, excluding the time required to transport a child to and from child care facilities, unless a longer commuting distance is normal to the community. Testimony at the hearing and written comment by the Task Forces indi-

cates strong feeling that the time required to transport a child to and from day care should be included within the two hour computation.

Section I.1.d. deals with standards for child care facilities. The Department proposes to amend the rule as follows:

> D. Child care standards: Required child care shall meet the standards specified by the Department of Public Welfare in Rule 2 and 3 and shall be available during the hours the individual is engaged in a WEP assignment plus any additional necessary commuting time;

The Examiner finds that the addition of the reference to meeting the standards of the Department of Public Welfare Rule 2 and 3 is a welcome addition. However, it is unclear as to whether or not licensure of such facilities is required. The rule should be amended to make that requirement more specific.

Section I.1.e. deals with health and safety standards. The Task Forces suggest that the language "shall be in compliance with" be substituted for "shall not be in violation of" in this section. The Examiner finds that it does not change the meaning of the rule, but does make the rule clearer. The Task Forces report also suggests that Section I.1.e. be amended by adding the following:

> Employment and training sites to which an individual is assigned shall be barrier free and in compliance with applicable federal, state and local laws.

Section I.1.f. deals with non-discrimination and provides that no assignments shall be made which discriminate on the basis of age, disability, sex, race, creed, color, national origin or public assistance status. The Task Forces suggest that the final sentence be amended as follows:

> Employment and training assignments shall be in compliance with EEO.

Section I.1.g. provides that no individual shall be referred to or continue to participate in employment or training unless employability and support services necessary for participation are available.

The Examiner finds that this section, as proposed and amended, is reasonable and necessary.

74. Section I.2. deals with other employment criteria which shall be considered in determining whether employment is appropriate. Section I.2.a. provides that appropriate employment may be temporary, permanent, full-time, part-time or seasonal if it meets the other employment standards of the section. The Task Forces report suggest amending the section as follows:

> Appropriate employment <u>which shall be appropriate for the individual client and</u> may be temporary, permanent . . . .

The rationale behind this change is client protection. The Examiner is unclear as to the way in which the proposed change fits the rationale listed.

Section I.2.b. defines prevailing wages for WEP participants as those which meet or exceed statutory or federal or state minimum wage, whichever is higher, and which are not less favorable than the wage normally paid for similar work by the employing agency or service. The Task Forces report suggests the addition of the word "company" to the phrase "agency, service or company". This is to assure that prevailing wages will be paid in both the public and private sector.

Section I.2.c. provides that the daily and weekly hours of work shall not exceed those customary to the occupation.

Section I.2.d. deals with exemption from employment. The Department proposes to strike the section formerly numbered as Section I.2.d.(1), to renumber Sections 2, 3, and 4 accordingly. The Task Forces report suggests that Section I.2.d. be amended by striking "no individual shall be required to accept employment if" and substituting therefor, "no individual shall be referred if". The rationale for the amendment is that the burden of determining whether a labor dispute is occurring should be on WEP rather than on the participant to so determine and refuse employment.

The Department proposes to add Section I.2.e. which provides:

> WEP shall not knowingly refer an individual to a position vacant due to strike, lock out or other bona fide labor dispute. If WEP should inadvertently make such a referral, no individual shall

be required to accept such employment.

The purpose of this amendment is to clarify the Department's intent that no person should be referred to a job vacant because of a labor dispute.

The Department also recommends the addition of Section I.2.f. to clarify its intention to avoid job displacement as a result of WEP placements. The section which they would propose to add is as follows:

> I.2.f.: WEP shall not knowingly contract with any employer if full or partial displacement of currently employed, full-time or part-time workers will result. Full displacement occurs when an employed worker loses his/her job for reasons other than normal turnover or the job is altered so as to effect a reduction of pay. Partial displacement occurs when the use of WEP registrants leads to a reduction of non-overtime hours in a normal work-week of workers presently employed in the same activity.

The Examiner finds Section I.2., as amended, to be reasonable and necessary.

75. Section I.3. deals with other training criteria including the quality of the training and whether it is likely to lead to employment. The Examiner finds that this section is both reasonable and necessary.

76. Section J. deals with general benefits for program participants. Section J.1. requires workers' compensation coverage for participants in on-the-job training and community work project programs. The Examiner finds that the proposed section is reasonable and necessary.

77. Section J.2. requires that where the participant is employed or engaged in community work project, on-the-job training, or classroom training, where others similarly employed are not covered by workers' compensation, the participants shall be provided with medical accident insurance coverage. This section, along with J.1., is necessary for the protection of the worker and also in order to be consistent with relevant federal regulations. The Examiner finds that the proposed section is reasonable and necessary.

78. Section J.3. deals with other fringe benefits. The Department proposed to amend the first sentence of that section to read as follows:

> 3. Other fringe benefits: Each participant in on-the-job training or community work project program shall also be assured of health insurance, unemployment insurance (to the extent such benefits are allowable), coverage under collective bargaining agreements and other benefits at the same levels and to the same extent as other employees similar employed, except that retirement benefits shall be limited pursuant to 29 C.F.R. 98.25 and chapter 720, Minnesota Laws (1978), and to working conditions neither more nor less favorable than such other employees similarly employed.

This amendment is made in order to clarify the previous language. The report from the Task Forces suggests the language of the first sentence be amended to read:

> . . . under collective bargaining agreements including pension and retirement coverage
> . . . .

The rationale for this suggestion is to assure that participants receive pension credits after transition to unsubsidized employment. The Examiner finds that this section, as amended by the Department, is reasonable and necessary.

79. Section K. of the rule deals with allowances and incentives for WEP participants. Section K.1. provides for incentive payments of $6.00 per day for participants in a non-wage WEP component excluding participation in intake, orientation, appraisal or while assigned exclusively to support services. The Examiner finds that this section is necessary and reasonable.

80. Section K.2. of the rule deals with transportation expenses. Section K.2.a. provides for reimbursement of actual costs incurred because of participation in non-salaried components such as classroom training. Expenses are based either on actual costs of public transportation, car pool payments or 13 cents per mile for miles driven under 100 miles per day. Where the participant can establish higher transportation costs, these will be reimbursed. Section K.2.b. authorizes individuals placed in employment, OJT, PSE or CWP to be reimbursed for transportation for a period not to exceed four weeks or until they receive their first full paychecks or grant adjustments reflecting new work related expenses, whichever occurs first.

It was suggested by the Task Forces and in comment at the hearing that the amount of reimbursement should not be 13 cents per mile, but, rather, should be the prevailing state reimbursement rate paid per mile (when a state car is unavailable). The Department has proposed the 13 cent standard because it is used in other programs and is included in Rule 44. The Examiner finds that this section as proposed is reasonable and necessary.

81. Section K.3. provides that WEP center staff may determine the amount of subsistence allowance, in addition to incentive and transportation payments, paid to individuals when they are in training facilities beyond the normal daily commuting distances from thier homes. The Examiner finds that this section is both necessary and reasonable.

82. Section K.4. provides that transportation expenses equal to two one-way traips will be paid to individuals enrolled at training facilities located beyond normal commuting distance. The purpose of these payments, which shall be made at 13 cents per mile, the actual cost of public transportation, or car pool payments, is to cover the initial trip to the training facility and the final trip home. Although there was some comment raised with regard to the 13 cent rate, the Department feels that the rationale given under Section K.2. also applies to this section. The Examiner finds that this section as proposed is necessary and reasonable.

83. Section K.5. permits WEP center staff to determine and authorize allowances for non-recurring expenses required for employment or training including, but not limited to, payment for auto repairs, insurance, special clothing, tools and equipment. The Examiner believes that the language in this portion of the rule could be more specific. For example, it is difficult to tell whether repairs of several different items on a person's car which broke down at different times would come under this section of the rule or would be considered a recurring expense. However, this section as proposed is reasonable and necessary.

84. Section K.6. provides that the WEP center may establish petty cash funds to meet participants' small cash needs incidental to training, transportation or referral, which cannot be met by other procedures. It is unclear to the Examiner whether this section or section K.5. requires reimbursement of either petty cash or non-recurring expense allowances upon attainment of unsubsidized employment. This should be clarified. The Examiner finds that this section as proposed is reasonable and necessary.

85. Section L. deals with relocation assistance. The Department proposed to amend that section as follows:

> WEP ~~may~~ shall assist certified individual to relocate his/her place of residence when WEP staff determines such relocation is necessary in order to enable him/her to become permanently employed and self-supporting. Relocation of AFDC participants is subject to the approval of the Secretary of Labor or his/her designee. . . .

This provision is consistent with Federal WIN guidelines and permits WEP staff to authorize funds for relocation with the concurrence of the participant. The Task Force report proposes that the following should be added after the first sentence of Section L:

> A relocation plan shall be covered by the protections of the informed consent of the client.

The Examiner finds that this section as amended is reasonable and necessary.

86. Section M. of the rule defines the components of WEP. Section M.1. defines Employability Development Planning (EDP). Section M.1.b. provides for in-depth assessments of those individuals who have problems which must be resolved before they can participate

in other WEP components or activities. At the hearing, comments were made by Ms. Baird regarding additional language assuring the need for and usefulness of any in-depth assessments conducted. Similar comments were made by the Institutional Review Board. It is the position of the Department that the proposed amendments to Section H.1. deal with those concerns. The Examiner finds that Section M.1., as proposed, is reasonable and necessary.

87. Section M.2. deals with Intensive Manpower Services (IMS). The Department proposes to amend that section of the rule by adding the following language:

> Participation in IMS shall be limited to three weeks; if the participant is not ready for placement in another WEP component additional three week periods shall be authorized if approved by the WEP center staff supervisor.

The Examiner finds that this section of the rule as amended is reasonable and necessary.

88. Section M.3. provides for classroom training, including institutional or other training as well as basic or remedial education conducted by a qualified instructor at a non-worksite. During the course of the hearing, it became clear that certain persons including Ms. Boyle, Ms. Baird, Mr. Anderson and Mr. Clabo, were concerned that college education should be permitted under WEP. Alternatively, Mr. Van Diest and Mr. Strei felt that the time which could be spent in classroom training should be limited. In order to clarify the Department's intent, the Department recommends the following amendment to Section M.3.:

> Classroom training (CT): Classroom training includes vocational, college, or other institutional training, as well as basic or remedial education, conducted by a qualified instructor ~~at-a-non-worksite~~. Classroom training shall be limited by budgetary contraints. Classroom training must lead to employment and self-sufficiency in the shortest time possible, consistent with the participant's employability plan.

The Examiner finds that this section, as amended, is reasonable and necessary.

89. Section M.4. deals with on-the-job training (OJT), which is defined as an employment opportunity which includes training. All employers providing OJT do so under a contract with WEP. An OJT participant is considered to be employed insofar as employment

affects AFDC, GA or FS benefit determinations, but remains an active participant in WEP. The Task Forces report suggests adding a subsection c to this section including a definition for criteria for employers capable of providing training, including a provision that such training cannot be in violation of labor or existing collective bargaining agreements. The Task Forces also felt that there should be strong assurance from employers that employment of the participant is to be continued at the end of the training contract. The purpose of these proposed amendments is to more closely follow WIN criteria for OJT and to build in protection for employees. The Examiner believes that the Department should consider the comments made by the Task Forces . The section, as proposed, is reasonable and necessary.

90. Section M.5. deals with the transfer component of WEP. It provides that certified individuals referred to and accepted by other eligible Federal or State funded employment or training programs who meet the eligibility requirements for those programs may be temporarily suspended from WEP. This section of the rule also provides that when compensation in accordance with the provisions of those programs is not available, or would be disadvantageous to the individual, the participant may choose to accept WEP benefits instead. It also provides that support and job services which are not provided under the alternative program, but which are necessary to permit the individual to continue in the program, will be provided or arranged for by the support services staff. The Examiner finds that the intent of this section is unclear as to whether the transfer programs which are considered are those operating solely within the State of Minnesota. This should be clarified. The Task Forces report suggests that the word "suspension" be used instead of "transfer" which would be consistent with the terms used in WIN and would eliminate confusion. The Examiner finds that this section, as proposed, is reasonable and necessary.

91. Section M.6. deals with Community Work Projects (CWP's). The purpose of a CWP is to provide participants with subsidized employment until they are able to move into other components or

activities or into unsubsidized employment. This section provides that CWP's shall not result in the displacement of currently employed workers. They shall be used to support positions for public service needs which have not been met or to provide new public services in state or local government, a public agency or a private nonprofit institution. It is envisioned that CWP positions will be developed by WEP staff. The Department proposes to amend the first paragraph of Section M.6. to read as follows:

> 6. Community Work Projects (CWP's): CWP's provide participants with subsidized employment until they are able to move into other components or activities or into unsubsidized employment. CWP slots will be developed to meet the individual needs of the participants and ~~shall meet the definition of appropriate work.~~ employment criteria set forth in Section I. of this rule.
>
> CWP's shall not result in the displacement of currently employed workers (see I.2.f. of this rule.) CWP's. . . .

The report of the Task Forces proposed to amend the second paragraph of M.6. to read as follows:

> CWP's shall not result in the displacement of currently employed workers including partial displacement such as a reduction in hours, work, wages or employment benefits. CWP's shall not replace vacancies resulting from attrition. In addition, CWP's shall be used to support positions for public service needs which have not been met or to provide new public services increasing employment opportunities over those which would otherwise be available in a unit. . . .

The purpose of both of these changes is to provide stronger language indicating WEP's committment to maintenance of effort and nondisplacement of jobs. At the time of the hearing, both Mr. Benner and Mr. Moore commented that requiring only the employer to state that the WEP job placement does not violate an existing collective bargaining agreement, as is required under section M.6., is insufficient because the union and the employer may disagree as to whether there is a violation. The Task Forces also agreed with Benner and Moore's position. It is the position of the Department that adequate safeguards have been developed because each WEP center will be served by a labor liaison who will participate in the development of CWP's to protect the interests of organized labor. In addition, local committees, which include representatives of organized labor, shall

be able to review all CWP positions. The Department indicated that requiring union approval of each position would unnecessarily slow CWP placement. The Examiner finds that this section of the rule as amended is reasonable and necessary.

92. Section M.7. of the rule deals with public service employment (PSE). It provides that CETA PSE Title VI positions shall be available to WEP participants, although such slots shall not be set aside for them. The Examiner finds that this section is necessary and reasonable.

93. Section N. of the rule deals with employee status and provides that a WEP participant shall not be deemed an employee of any public agency and shall not be subject to the provisions of law relating to state or federal employees. The Examiner suggests the second line be amended to read "and shall not be subject to the provisions of law" rather than "provisions of laws." The Examiner finds that this section is necessary and reasonable.

94. Section O. of the rule deals with support services available to WEP registrants. Section O.1. of the rule lists support services available to all WEP registrants for the purpose of facilitating employability plans and self-support goals. The Task Forces suggest that a sentence be added to section O.1. as follows:

> Participation of WEP enrollees in support service activities is voluntary and should involve informed consent.

The rationale behind this proposed addition is that voluntary participation and support services provides protection against WEP becoming more than an employment program. Informed consent provides the opportunity for thorough discussion of needed social services while giving the enrollee the opportunity for independent thought.

Section O.1.a. deals with provision of day care services to children. It provides that child care should be suitable for the individual child and that the caretaker shall be involved in the selection of the facility if more than one facility is available. If one facility is available, the caretaker must accept it unless the caretaker can show it is unsuitable for the child. Child care arrangements must comply with standards set forth in 45 C.F.R. 228.42.

There was discussion at the hearing with regard to the concept of a parent being forced to accept specific child care facility. In its comments, the Department points out that this is consistent with DPW Rule 202 and with AFDC WIN Regulations. The participants are free to seek their own placements with private or related sitters and are not limited to the resources offered by the program. The Task Forces report suggests that the sentence reading "if only one facility is available, the caretaker shall accept it, unless the caretaker can show that it is unsuitable for the child" be deleted. They suggest that this sentence be added:

> Refusal for reimbursement cannot be made on the basis of the child care provider being a blood relative. I.e., grandparent, aunts, uncles, step parents.

The rationale for this proposed amendment is to permit flexibility so that the caretaker can make whatever arrangements would best suit his or her needs. The Task Forces suggest adding the following sentence at the end of the second paragraph:

> Cost of child care should be provided by WEP for as long as the individual is enrolled in WEP.

The rationale behind this addition is the child care costs often make working in unsubsidized employment attained through the project less favorable than working in subsidized employment.

Section O.1.b. provides that family planning services shall be available to participants on a voluntary basis. The Task Forces report suggests adding that "informed consent by the participant shall accompany referral to family planning," in order to protect the client from intimidation.

Section O.1.c. provides that counseling services to assist individuals and families in coping with and resolving any personal or relationship concerns may be provided through WEP.

Section O.1.d. provides that WEP may arrange and facilitate access to and use of physical and mental health resources to identify any physical or mental limitations which would restrict vocational options. It should be noted that for GA and AFDC recipients the medical examination under this section is a medical assistance or general assistance medical care expenditure and will not be paid for under WEP.

Section O.1.e. deals with vocational rehabilitation services where funds for such services are not available through the Division of Vocational Rehabilitation and where there is reasonable expectation that the services will lead to unsubsidized employment. The Department proposes to amend the second paragraph of this section to read as follows:

> Vocational rehabilitation services ~~may~~ shall be provided with WEP funds only when not available through the Division of Vocational Rehabilitation and the Department of Economic Security, and when there is reasonable expectation that the services will lead to unsubsidized employment and the services can be provided within the constraints of the WEP program and budget.

The Task Forces report suggest putting the words "unsubsidized employment" (in the second paragraph) all in capital letters to emphasize that referral to vocational rehabilitation services is clearly understood as only a means for achieving unsubsidized employment.

The Examiner finds that this section is reasonable and necessary.

95. The purpose of Section O.2. is to describe support services which may be arranged, when necessary for successful completion of an employability plan. The Department proposes to amend the first sentence of this section as follows:

> 2. The following support services ~~may~~ shall be arranged for or provided when determined necessary by the WEP Center staff to successful completion of an employability plan;

The Task Forces report proposes that a sentence be added to section O.2. which reads as follows:

> Participation of WEP enrollees in support service activities is voluntary and should involve informed consent.

The purpose of this amendment is to protect against WEP becoming more than an employment program and of informed consent to provide the opportunity for thorough discussion of need and social services. The supplementary social services provided in this section of the rule include homemaking service, housing services, legal services, money management services, and transportation services. The Examiner finds that the proposed section, as amended, is reasonable and necessary.

96. Section P of the rule deals with the WEP adjudication system. Section P.1. of the rule provides for a WEP adjudication system for appealing agency actions within the project. At the hearing, Ms. Baird, among others, suggested that this section be amended so that individuals would be referred to special legal services. The Department believes that the proposed amendment to Section B.12. providing advocacy services provides the client protection which has been sought. The Examiner finds that this section is reasonable and necessary.

97. Section P.2. provides that a welfare appeals referee shall conduct welfare hearings pursuant to procedures prescribed by state and federal statutes and regulations. The Examiner finds that this section is necessary and reasonable.

98. Section P.3. lists the issues to be decided under the WEP adjudication system. Section P.3.a. provides that grievances, defined as written complaints which do not involve the threat of WEP sanctions, will be handled on an informal basis initially. This section also provides that while adjudication is pending the welfare grant amounts will be determined in relation to earnings available to the recipient. At the hearing, Ms. Baird raised the concern that the person's welfare grant might be reduced by the amount of money theoretically available from WEP work during the period of adjudication. She felt that it was necessary that the sentence be amended to reflect the recipient's actual earned income. On the basis of this comment, the Department recommends amendment to section P.3.a. as follows.

> While adjudication is pending, the welfare grant amounts will be determined in relation to the ~~earnings~~ income actually available to the recipient.

The Task Forces report suggests that P.3.a. be amended such that the last paragraph would read as follows:

> Grievances shall be initially handled ~~and~~ informally by the WEP center supervisor. WEP staff will reduce complaints to writing where necessary. Within five working days. . . in 4, 5 and 6 below.

It is the position of the Task Forces that this provision protects participants who may be illiterate or whose primary language is not English.

Section P.3.b. provides that grievances involving discrimination on the basis of race, religion, color, national origin, sex, or age, shall be handled according to Equal Opportunity provisions established under 29 C.F.R. 31 and 45 C.F.R. 80, as well as, where applicable, Title VI of the Civil Rights Act of 1964.

Section P.3.c. lists sanctionable actions for which a participant may be deregistered from WEP and indicates such sanctionable actions shall be processed through the WEP adjudication system described in the rule.

The Examiner finds this section as amended to be reasonable and necessary.

99. Section P.4. describes the process for initial conciliation efforts and WEP hearings with regard to sactionable actions. This section provides for an initial informal conciliation period not to exceed 30 days followed, if conciliation is not available, by the issuance of a notice of intended deregistration. The notice will include forms required to file for a hearing which must be filed within ten days of the mailing date of the notice. The actual hearing will be held by a hearing officer of the Department of Economic Security, pursuant to Minn. Stat. § 268.10, subd. 3. (1976) and, where applicable, 29 C.F.R. 56.66-56.68. If the party disagrees with the written decision of the hearing officer, a notice of a review of the decision must be requested within ten days of the date of the decision. The Department proposes to amend the first sentence of the last paragraph of this section to read as follows:

> DES shall mail copies of the hearing officer's decision to the participant, the WEP Center and WEP Central, the local welfare agency, the Department of Public Welfare and other parties to the hearing.

Section P.4.c. provides that a request for review by any party shall not stay implementation of the hearing officer's decision.

The Examiner finds that this section of the rule as amended is reasonable and necessary.

100. Section P.5. describes the appeal process for AFDC registrants. The Examiner finds that this section is necessary and reasonable.

101. Section P.6. describes the appeal process which will be followed for GA and Food Stamp participants. The Examiner finds this section is necessary and reasonable.

102. Section 7. sets forth the procedures to be followed on post determination counseling for all participants. It is noted that the purpose of the counseling period is to encourage the individual to participate in WEP. The Examiner finds that this section is necessary and reasonable.

103. The Task Forces report proposes to substitute a new section 7. and to renumber the existing section 7. as well as every section thereafter. The section which they propose to substitute is as follows:

> Adjudication costs: Costs incurred by the participant during and related to the adjudication process (such as transportation, child care, legal fees, lunches) will be reimbursed by WEP as time under the program.

The rationale behind this proposed amendment is people often have grievable issues and are inhibited by participation in the fair hearing process by the costs involved. The Examiner presents this amendment to the Department for its consideration.

104. Section P.8. of the rule deals with sanctions as post-determination action. Section P.8.a. notes that a voluntary participant shall not have his or her welfare benefits terminated, reduced, or suspended because of failure or refusal to participate in WEP. However, mandatory WEP participants who have been deregistered are subject to sanctions as are listed in the rule. The Examiner finds that this section is necessary and reasonable.

105. Section P.9. deals with readmittance to WEP as a post-determination action. The Task Forces report suggests that the second sentence of this section be amended as follows:

> If the 60 day counseling period is unsuccessful, as determined by the WEP support service staff, if an individual has failed to participate in WEP without good cause two or more times, she/he must remain deregistered for six months from the date the welfare grant was adjusted.

It is the rationale of the Task Forces that barring participation is punitive in nature and that the section, as amended, will better aid in preventing and punishing those persons who attempt to abuse the system. The Examiner finds that this section as proposed is

reasonable and necessary.

106. Section Q. of the rule deals with deregistration. Section Q.1. provides that deregistration shall be permormed by WEP under the conditions set forth in Section Q.2. Section Q.4. provides that volunteers who withdraw from WEP are deregistered without penalty. Section Q.5. provides that those who refuse to participate are deregistered as exempt. Section Q.6. provides that if no suitable employment or training is found for a volunteer, they shall also be deregistered as exempt. The Hearing Examiner finds that section Q, as proposed, is reasonable and necessary.

107. Section R. of the rule is a severability provision which is necessary to ensure that if some part or parts of the rule are judged invalid, the rest of the rule will remain effective. The Examiner finds that this section of the rule is reasonable and necessary.

Based upon the foregoing Findings of Fact, the Examiner makes the following:

CONCLUSIONS

1. The Department of Public Welfare gave proper notice of the promulgation of the proposed rule.

2. The Department of Public Welfare has statutory authority to take the proposed action, to wit, the promulgation of the proposed rule.

3. That the Department of Public Welfare has fulfilled all relevant, substantive and procedural requirements of law or rule.

4. That the Department of Public Welfare has demonstrated the need for and reasonableness of the proposed rule by an affirmative presentation of facts in the record with any exceptions noted in the Report herein.

Based upon the foregoing Conclusions, the Hearing Examiner makes the following:

RECOMMENDATION

It is recommended that the proposed rule be adopted by the Department of Public Welfare with consideration given to the Findings of Fact herein.

Dated: August 14, 1978.

NATALIE L. GAULL
Hearing Examiner

N O T I C E

Pursuant to Minn. Stat. § 15.0412, subd. 4 (as amended by Minn. Laws 1977, Chapter 443), this Report will be available to all persons upon request for at least five working days before the Department takes any final action on the rule.

The Department of Public Welfare shall, if it proposes to adopt the rule as proposed or amended, submit the complete hearing record, including its Findings and Order, to the Chief Hearing Examiner no earlier than five working days subsequent to the receipt of this Report. This submission shall also clearly indicate any changes made to the rule as originally proposed, preferably in the format that will be submitted to the State Register for publication. The Chief Hearing Examiner shall complete his review and submit his report to the Department within ten calendar days. Thereafter, the Department shall be responsible for filing the rule with the Attorney General. The Department must give notice to all persons who request to be informed that the hearing record has been submitted to the Attorney General.

ADMIN 1000

STATE OF MINNESOTA

DEPARTMENT of Public Welfare

Office Memorandum

TO : Lee Sheehy
Special Assistant Attorney General

DATE: 12/19/78

FROM : Beverly J. Heydinger
Special Assistant Attorney General

PHONE: 6-8405

SUBJECT: DPW Rule 63

Accompanying this memorandum please find the complete record for the permanent rule of the Department of Public Welfare regarding the Work Equity Program, Rule 63. It has been reviewed by the Chief Hearing Examiner who found that there was no substantial change from the proposed permanent rule. Pursuant to the rules of the Office Hearing Examiners, Rule HE 102, notice that the rule has been submitted to you for approval has been mailed to the persons who requested notice.

Please note that the transcripts for the Rule 63 hearings are placed with the miscellaneous materials (because of their length) rather than in the file of original hearing documents. Should you have any questions concerning the Rule or the accompanying record, please contact me.

BJH:rox

DPW-78-057-NG

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF PERMANENT RULES OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING THE WORK EQUITY PROJECT, RULE 63.

REPORT OF THE CHIEF HEARING EXAMINER

WHEREAS, hearings were held on June 19, 20, 22, and 23, 1978, before Natalie L. Gaull, a Hearing Examiner of the State Office of Hearing Examiners, on the above-entitled matter in compliance with Minn. Stat. § 15.0412, Subd. 4; and

WHEREAS, the Report of Hearing Examiner made pursuant to Minn. Stat. § 15.052, Subd. 3, was issued to the Department of Public Welfare on August 14, 1978; and

WHEREAS, the Department of Public Welfare has now determined to adopt rules pursuant to Minn. Stat. § 15.0412, Subd. 4; and

WHEREAS, the Department of Public Welfare has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, Subd. 4, and Rule HE 107; and

WHEREAS, the Chief Hearing Examiner finds that the final proposed rules are not substantially different from those proposed at the public hearings and that the Department of Public Welfare has met all requirements of Minn. Stat. § 15.0412, Subd. 4.

NOW, THEREFORE, upon receipt of this Report, the Department of Public Welfare has the responsibility of submitting the complete hearing record and the rules as adopted by the Department to the Attorney General and to publish in the State Register, all pursuant to Minn. Stat. § 15.0412, Subd. 4.

Dated this 18th day of December, 1978.

DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE EDWARD J. DIRKSWAGER, JR.

COMMISSIONER OF PUBLIC WELFARE

In the Matter of the Proposed Adoption of Rule 63 of the Department of Public Welfare Governing the Administration of the Work Equity Project

ORDER ADOPTING RULE 63

Docket No. 78-057-N6

The above-entitled matter came on for hearing before Hearing Examiner Natalie L. Gaull on June 19, 1978, in the Auditorium of the State Office Building, Room 83, Wabasha Street, Saint Paul, Minnesota, 55155. The hearing continued on June 20, 1978, at the same location and on June 22, 1978, at the Saint Cloud City Annex, Saint Cloud, Minnesota, 56301, and on June 23, 1978, at the Appleton Civic Center, Appleton, Minnesota, 56208. Pursuant to Minn. Stat. §15.0412, Subd. 4 (Supp. 1977), all persons, associations, and other interested groups registered with the Secretary of State for that purpose received notice of the hearing.

The hearing considered proposed Rule 63 as published at State Register, Vol. 2, No. 45, pp. 2011-2026. The following persons testified for the Department of Public Welfare: Barbara T. Stromer, Director of Division of Assistance Payments; Beverly Jones Heydinger, Special Assistant Attorney General; and Gail M. Olson, Work Equity Project Supervisor in Department of Public Welfare. The following persons testified for the Department of Economic Security: Jil Leeds Rivera, Work Equity Project Coordinator; William Brown, Special Assistant Attorney General; Larry Simmons, Director of Balance of State Comprehensive Employment and Training Act Program; Gary Weissman, Balance of State; Mary Zierdt, Project Support Supervisor; Ron Putz, Management Services Supervisor; Richard Thorpe, Manpower Director, City of St. Paul; Readus Fletcher, Manpower II, City of St. Paul; and Christine Luzzie, Special Assistant Attorney General.

The hearing continued until all interested groups and persons had an opportunity to be heard. Pursuant to the order of the Hearing Examiner, the record remained open for 20 days to allow the submission of written material.

Based upon the records and proceedings, the Hearing Examiner made Findings of Fact, Conclusions, and a Recommendation that are contained in the August 15, 1978, Report of Hearing Examiner, attached hereto as Exhibit A. Pursuant to Minn. Stat. §15.0412, Subd. 4 (Amended, 1977), the Report was available to all affected persons for at least five days.

Having considered all of the evidence adduced and upon the records, files and proceedings herein, and applicable statutory standards and criteria, and having confirmed the need for the above-captured rule and the reasonableness thereof:

NOW, THEREFORE, IT IS ORDERED that the Findings of Fact, Conclusions, and Recommendation of the Hearing Examiner are hereby adopted and incorporated herein except as modified or rejected below. In addition, the Commissioner of Public Welfare, makes the following:

FINDINGS OF FACT

The Hearing Examiner numbered her Findings of Fact 1 through 107. For ease of comparison, the Commissioner's Findings of Fact will deal with the relevant Findings of Fact made by the Hearing Examiner in the order in which they appear in the Examiner's report.

1. (This finding concerns Number 8 of the Hearing Examiner's Findings of Fact relative to Section A.1. of Rule 63.[1]) The Hearing Examiner questions the Department's statement that Minn. Stat. §256.736, Subd. 2 (Amended, 1977) provides authority

[1]Hereinafter, references to the Hearing Examiner's Findings of Fact and the sections of Rule 63 with which they deal will be abbreviated to the following form, "Finding 8, Section A.1."

for the promulgation of Rule 63, and also questions whether it is necessary to rely on that statute to provide such authority. The Department included this statute as program authority because of the status given the Work Equity Project in the State's revised Work Incentive Program (hereinafter "WIN") Plan, approved by the Chicago Regional WIN Office. The WIN Plan authorizes the Work Equity Project (hereinafter WEP) to act as the WIN sponsor for AFDC recipients in designated WEP counties. However, since the Examiner finds elsewhere that sufficient authority exists for the promulgation of the rule, the Department accepts the Hearing Examiner's finding.

2. Finding 12, Section A.1. The Examiner again questions whether WIN regulations should apply to WEP absent specific authority. As explained above in discussion of Finding 8, WEP is a WIN sponsor, authorized as such by the Chicago Regional WIN office. The State WIN Plan specifies that WIN regulations shall apply to WEP unless specifically waived.

3. Finding 16, Section A.2. The Examiner correctly noted that the punctuation of this section in the copy submitted to the Examiner makes it difficult to understand. The punctuation is correct as the rule appears in the State Register, and reads as follows:

> A.2. This rule is binding on DPW and DES, all county welfare and human services boards (hereinafter called local welfare agencies), and applicants and recipients as defined and outlined in this rule.

The Department accepts the Hearing Examiner's finding.

4. Finding 17, Section A.3. The Examiner finds that translated handbooks would be a more logical tool to use than translation services. The Department intends to provide translation services to persons whose primary language is not English by

the use of translators, cassette tapes containing translated information, and translated printed materials. The Department accepts the Hearing Examiner's finding.

5. Finding 21, Section B.4. The Examiner suggests that the language of this section be clarified to conform to its intent. The Department changes the section to read:

> WEP shall provide ~~all WIN services traditional to WIN~~ to its participants all services available to WIN participants and shall increase the opportunities for training and jobs available through a work incentive program to additional numbers of public assistance recipients. WEP shall comply with all applicable federal statutory, regulatory, and administrative requirements of the WIN program unless specifically waived by the United States Departments of Labor or Health, Education and Welfare.

The Department accepts the Hearing Examiner's finding.

6. Finding 22, Section B.5. The Examiner states that she "finds the portion of this section dealing with mandatory participation is neither necessary nor reasonable based on the record herein." The Department disagrees with the Examiner's finding, and declines revision of the section. Minn. Stat. §256D.11, Subd. 1a (Amended, 1977) authorizes the Commissioner of Public Welfare to designate counties for participation in WEP. The Department believes that it is necessary for it to retain control over which counties participate to safeguard the interests and rights of recipients who might otherwise lose benefits under WEP, as well as to protect the demonstrational aspects of the project. Furthermore, the Department must retain control over county participation because of budgetary increases or decreases which might be experienced (see Statement of Need for further support). The Department thus rejects the finding of the Hearing Examiner.

7. Finding 24, Section B.7. The examiner finds that this section is vague and should be amended. To conform to the Examiner's

recommendation, the Department makes the following change in the first sentence of Section B.7.:

> The local welfare agencies shall be fully reimbursed for increased local expenditures resulting from operation of the Work Equity Project.

The remaining part of the section is unchanged. The Department accepts the finding of the Hearing Examiner.

8. Finding 28, Section B.11. The Examiner notes that the last sentence of this section is incomplete. The Department corrects the sentence to read as follows:

> The Prime Sponsors shall give prompt notice to each participant of the project's termination and shall make every reasonable effort to assist each participant to obtain substitute services.

The Department accepts the Hearing Examiner's finding.

9. Finding 44, Section D.2. The Examiner notes that the Department proposes an addition to this section to clarify agency responsibilities in WEP. The revision made by the Department reads as follows:

> 2. The local welfare agency shall determine exemptions. The following AFDC and GA applicants and recipients shall be exempt from WEP registration:

The Department accepts the Hearing Examiner's finding.

10. Finding 44, Section D.2.c. The Examiner recommends that "ill" be defined in this section. The Department amends Section D.2.c. to read:

> c. persons who are ill (for purposes of this Section, D.2., illness shall be defined as an illness or injury which is medically diagnosed as preventing him/her from engaging in suitable work activities, and which is expected to last less than 90 days);

The Department accepts the Hearing Examiner's finding.

11. Finding 44, Section D.2.d. The Examiner recommends that "incapacitated" be defined in this section. The Department therefore amends Section D.2.d. to read:

> d. persons who are incapacitated (for purposes of this Section, D.2., incapacity shall be defined as an impairment which either by itself or in conjunction with age prevents him/her from engaging in suitable work activities, and which is expected to last more than 90 days; AFDC recipients whose WEP exemption is based upon incapacity shall be referred to the Division of Vocational Rehabilitation in the Department of Economic Security);

12. Finding 44, Section D.2.f. The Examiner suggests that the Department consider amending this section to make travel time inclusive of the time necessary for transporting children to or from child care. The Department's proposed language is based on Federal WIN regulations set forth in 45 CFR §224.20 (b)(6), which exempts those persons "remote" as stated below:

> The individual shall be considered remote if a round trip of more than 2 hours by reasonably available public or private transportation, exclusive of time necessary to transport children to and from a child care facility, would be required for a normal work or training day ...

Since this requirement has not been waived by the United States Department of Health, Education and Welfare, it is binding on AFDC recipients in the Work Equity Project. In order to create as much uniformity in the program as possible, the same policy has been extended to General Assistance recipients. Although the Task Force recommendation that commuting time of 2 hours include the time necessary for transporting children to and from child care may have merit, the Department rejects adoption of the policy on the basis that it is not allowed under federal AFDC regulations and could not therefore be uniform for AFDC and GA recipients.

13. Finding 44, Section D.2.g. The Examiner suggests that the Department consider amending this section in accordance with the Task Force recommendation. The recommendation is to expand the coverage of the section to exempt those "Persons whose presence in the home is needed for compelling reasons, for example because of the ... size or age of family, stress situations, or special needs of the family." The section as proposed by the Department exempts from WEP registration "persons whose presence in the home is needed because of the illness or incapacity of another person in the household." This exemption is based on Minn. Stat. §256D.11 Subd. 6 (3) for GA recipients, and 45 CFR §224.20(b)(7) for AFDC recipients. Those references specifically provide for the exemption as proposed and do not provide for broader exemption criteria. The Department therefore finds that the Task Force recommendation is unacceptable and rejects amendment of this section.

14. Finding 54, Section E.6. The Department accepts the Examiner's finding that this section, as amended, is redundant of Section E.4., and therefore strikes Section E.6. and renumbers subsequent sections of Section E.

15. Finding 56, Section E.8. (now renumbered as Section E.7.) The Examiner suggests that the Department heed the Task Force recommendation to define "on-strike", "lock-out", and "lay-off". The Department therefore revises the section by adding the following sentence:

> <u>"Strike" shall be defined in accordance with Minn. Stat. §179.01 Subd. 8; "lock-out" shall be defined in accordance with Minn. Stat. §179.01 Subd. 9.</u>

The Department declines definition of "lay-off" since it is not elsewhere concisely defined in either federal Food Stamp legislation or in state Employment Services legislation, and is not capable of precise definition. The Department instead defers to

the expertise of the Department of Economic Security in the determinations it makes of "lay-offs", due to that Department's experience and the variable factors that must be taken into account in making such determinations. Furthermore, any dispute a recipient has concerning his/her exempt status may be appealed as set forth in Section P of this rule. The Department thus accepts the suggestion of the Hearing Examiner in part and accepts the finding of the Hearing Examiner.

16. Finding 58, Section F.1. The Examiner states that the language proposed in this section does not convey the intended meaning. The Department therefore revises the section to read as follows:

> 1. The referring agency shall inform all applicants and recipients of AFDC, GA and Food Stamps of their rights to contest determination of WEP non-exempt status in accordance with the provisions of this Rule. <u>The referring agency determination is binding on the individual, unless the individual disagrees with the determination and requests a hearing on the issue. If such a request is made, he/she shall be considered exempt until his/her status is determined by the welfare appeals referee.</u>

The Department accepts the Hearing Examiner's finding.

17. Finding 66, Section H.1. The Department wishes to clarify what it proposed to the Hearing Examiner as new Section H.1. Only the first paragraph quoted by the Examiner was intended by the Department as amendment to the rule. The types of tests listed were included only to illustrate the meaning of the section. Section H.1. should thus end with "... and support services in O.1.c." The Department believes that this does not change the thrust of the language approved by the Hearing Examiner and accepts her finding that the section is reasonable and necessary.

18. Finding 73, Section I.1.d. This section of the rule specifies that child care provided in WEP must meet the standards set forth in DPW 2 and DPW 3. The Examiner states that the section

is unclear as to whether it intends to require licensure of such child care facilities. The Department agrees that the language is ambiguous and therefore amends the section to read as set forth below:

> d. Child care standards: Required child care shall meet the standards specified by the Department of Public Welfare in Rules 2 and 3, shall be licensed as required and defined therein, and shall be available during the hours the individual is engaged in a WEP assignment plus any additional necessary commuting time;

The Department accepts the Hearing Examiner's finding.

19. Finding 73, Section I.1.e. The Examiner finds that this section lacks clarity. The Department modifies the section in accordance with the Examiner's suggestion, and deletes the phrase "and standards" since it does not identify a legally enforceable concept.

> e. Health and safety standards: The employment or training site to which the individual is assigned shall be in compliance with ~~not in violation of~~ applicable federal, state and local health and safety laws, and regulations ~~and standards~~;

The Department accepts the finding of the Hearing Examiner.

20. Finding 83, Section K.5. The Examiner states that she "believes that the language in this portion of the rule could be more specific," but finds that the section as proposed is reasonable and necessary. The Department declines such revision of the section. The language of 45 CFR §224.32(e) states that "Individuals may be paid allowances for nonrecurring expenses as authorized by the Secretary of Labor." This WIN regulation is also binding on AFDC recipients in WEP, as a WIN sponsor. The language as proposed will remain unchanged in order to accommodate both the individual, unanticipated needs of WEP participants and policy changes which may be initiated by the

United States Secretary of Labor.

The Examiner also refers to Section K.5. in Finding 84 and raises the question of whether or not participants who receive such allowances are required to repay the amount received once placed in employment. Since it is not the intent of the Department to require such repayment, the Department amends the section as follows:

> 5. WEP Center staff ~~will~~ shall determine and authorize allowances for nonrecurring expenses which are required for employment ~~include~~ including, but ~~are~~ not limited to, payments for auto repairs, auto insurance, special clothing, tools and equipment; participants shall not be required to reimburse the WEP Center for any such allowances received.

The Department accepts the Hearing Examiner's finding.

21. Finding 84, Section K.6. The Examiner finds that it is unclear whether this section anticipates repayment of any or all petty cash funds issued to participants. To clarify this, the Department amends the section as follows:

> 6. Petty cash: WEP Center may establish petty cash funds to meet participants' small cash needs incidental to training, transportation, or referral to employment which cannot be met by other procedures; participants shall not be required to reimburse the WEP Center for any such funds received.

The Department accepts the finding of the Hearing Examiner.

22. Finding 89, Section M.4. This section deals with the On-the-Job Training component. The Examiner suggests that the Department consider several comments made by the Task Forces. The Task Forces propose amendments to the section with the goal of more closely following WIN criteria for On-the-Job Training contracts. The State WIN plan stipulates that WEP is a WIN sponsor and as such is required to meet all WIN requirements

unless specifically waived. Since a waiver of On-the-Job Training contracts, criteria has neither been requested or granted, WEP is obligated to and intends to follow the applicable criteria. Such contracts are not initiated unless the employer is committed to employing the WEP participant as a regular employee at the termination of the training contract. The Department believes that these factors adequately protect the participant's interests. The Department accepts the Hearing Examiner's finding that the section, as proposed, is reasonable and necessary.

23. Finding 90, Section M.5. This section discusses the transfer component of WEP, which enables a participant to be transferred from WEP to other eligible federal or state funded employment or training programs. The Examiner finds the section unclear as to whether it intends to allow participants to transfer to programs which are "operating solely within the Minnesota". Since the possibility exists that persons living in counties bordering other states may be able to avail themselves of training opportunities in those nearby states, the Department does not wish to confine the section to that meaning. In order to be able to exercise necessary control over transfer plans, however, the Department amends the first sentence of the section to read as follows:

> 5. Transfer: Certified individuals referred to and accepted by other eligible federal or state funded employment or training programs, and who meet all eligibility requirements under those programs, shall be temporarily suspended from WEP, <u>if appropriate to the employability plan</u>.

The remaining part of the section remains unchanged. The Department accepts the finding of the Hearing Examiner.

24. Finding 93, Section N. This section deals with employee status of WEP participants, and stipulates that such participants shall not be regarded as state or federal employees on the basis of

WEP registration. The Examiner suggests a grammatical correction in the sentence. The Department accepts the suggestion and amends the section to read as follows:

> A WEP participant shall not by virtue of registration in WEP be deemed an employee of any public agency, and shall not be subject to the provisions of ~~laws~~ law relating to state or federal employees, including those relating to hours of work, rates of compensation, leave, unemployment compensation, and state or federal employee benefits.

25. Finding 94, Section O. The Examiner cites several recommendations made by the Task Forces for amendment of this section. The Examiner did not suggest that these amendments be made and the Department prefers the language proposed, as being consistent with its obligations and DPW 202. The Department therefore declines amendment of the section and accepts the Hearing Examiner's finding that the section, as proposed, is reasonable and necessary.

26. Finding 103, Section P.7. The Examiner presented the following Task Forces recommendation for the Department's consideration as an amendment:

> Adjudication costs: Costs incurred by the participant during and related to the adjudication process (such as transportation, child care, legal fees, lunches) will be reimbursed by WEP as time under the program.

The Department rejects adoption of the proposal for the reasons discussed below. First, the WIN regulations set forth in 45 CFR §224.76 states that during the adjudication process, (a) WIN benefits under Part C of Title IV of the Act (not AFDC benefits) shall cease and the 60-day counseling period by the SAU shall commence ..." The purpose of the 60-day counseling period is to encourage the individual to participate in WIN and thus it is an allowed service. All other WIN services cease, such as training allowances, supportive services, etc. As a WIN sponsor WEP must adhere to this standard for AFDC participants.

In the interest of fairness and uniformity, the Department declines adopting disparate policies for AFDC, GA, and Food Stamp participants. Since the Department is prohibited by federal regulation from offering the suggested services (such as cost reimbursement) to AFDC WEP participants, it will not adopt a policy allowing those services for GA and Food Stamp participants.

Furthermore, the Department believes that participants' interests are adequately maintained during adjudication through the continuance of program eligibility while the issue is being adjudicated. Thus, the AFDC or GA grant or Food Stamps continue to be issued at the level of need pending a final decision.

Based upon the above considerations, although the Department appreciates the comments, it rejects the proposed amendment and accepts the Hearing Examiner's finding (summarized in Finding 104) that the section is reasonable and necessary.

27. In addition to the amendments cited above, the Department makes the following corrections in the rule. These corrections are grammatical, punctuational, or formal in nature and are not intended to change the substantive meaning of amended sections. For example, to conform to official rule writing guidelines, "will", "should", and "must" are replaced with "shall". For internal consistency, references to "she/he" have been changed to "he/she". To simplify description of these changes, the section number will be listed, followed by a brief statement of the correction.

Section	Change
B.7.	"will" to "shall" (twice)
B.8.	"Section" added to clarify
B.11.	"United States" added to clarify "DHEW" added for consistency

Section	Change
C.31.	"Chapter" abbreviated to "Chap."
C.43. through 49. 51. through 55.	Renumbered because of additional definition.
E.2.c.	"Section" added to clarify. Section reference corrected due to renumbering. Erroneous reference to "WIN-exempt" changed to "WEP-exempt".
E.6. and 7.	Renumbered because of deleted section.
F.3.	"Should" to "shall" (four times) Section renumbered to simplify references.
G.1.a.	Redundant language removed.
H.	Sections renumbered because of additional paragraph.
H.5.	Spelling of "ongoing" corrected.
I.	"she/he" to "he/she".
I.1.b.	"Section" added to reference.
I.2.d.	Renumbered because of deleted section.
I.2.d.(1)	"she/he" to "he/she".
J.3.	"will" to "shall".
K.2.a.	"Will" to "shall".
K.3.	"will" to "shall".
K.5.	"will" to "shall". Wording simplified from "include, but not limited to" to "including, but not limited to".
L.	"may" to "shall".
M.2.	Section renumbered to simplify references.
M.2.b.	Abbreviations added for consistency. "she/he" to he/she".
M.4.a.	"will" to "shall".
M.4.b.	"Food Stamp" spelled out for clarity.
M.5.	"will" to "shall".
M.6.	Section renumbered to simplify references.
M.6.a.	"will" to "shall".
M.6.c.	"must" to "shall" (twice) "will" to "shall"
M.7.	"CETA" added for consistency
O.1.a.	"must comply" changed to "shall be in compliance with" for clarity.

Section	Change
O.1.e.	"may" to "shall".
O.2.	"may" to "shall" "Center" added to clarify duties.
P.2.	"FS" references spelled out as "Food Stamp".
P.3.	Section renumbered to simplify references.
P.3.b.	"will" to "shall".
P.3.c.	Reference clarified.
P.3.d.	CFR cites corrected.
P.4.	Section renumbered to simplify references.
P.4.b.	"she/he" to "he/she".
P.4.c.	"will" to "shall". "may" to "shall"
P.4.e.	"she/he" to"he/she".
P.5.b.	"of" omitted to clarify sentence.
P.7.	Section renumbered to simplify references.
P.7.a.(3)	"Section" added to clarify reference.
P.7.c.	"she/he" to "he/she". "will" to "shall".
P.9.	"she/he" to "he/she" (three times)
Q.2.c.	"she/he" to "he/she".
Q.2.d.	"she/he" to "he/she".

28. Finding 33, Section C.23. The Department wishes to further amend its definition of "Hearing Officer" to read as follows:

> The hearing officer designated by DES to hear and decide issues relating to grievances and sanctionable issues involving WEP participants.

This amendment is to further clarify the role of the hearing officer, and to conform to the WIN definition in 29 CFR §56.1.

NOW THEREFORE, IT IS ORDERED that those Findings of Fact, Conclusions, and Recommendations of the Hearing Examiner contained in the Report of the Hearing Examiner that have been accepted by the Department as indicated above are hereby adopted and incorporated herein.

It is further ordered that this rule, identified as Rule 63 of the Rules of the Minnesota Department of Public Welfare, is adopted this 12th day of December, 1978, and after this day Rule 63 shall read in its entirety as set forth in the attached Exhibit B, pursuant to the authority vested in me, and pursuant to the authorities cited in Section A.1. of Rule 63.

Dated: 12-12-78

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

for Edward J. Dirkswager, Jr.
Commissioner

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF PUBLIC GOVERNING THE WORK EQUITY PROJECT, RULE 63

STATEMENT OF EVIDENCE

In addition to the "Statement of Need" which is available for inspection or purchase at the office of Hearing Examiners, 1745 University Avenue, St. Paul, Minnesota 55104, and in support thereof, the Department of Public Welfare will introduce the following evidence:

Testimony will be presented explaining the legislative authorization for this amendment and the need for the proposed Rule.

We may call on one or more of the following expert witnesses to testify:

Edward J. Dirkswager, Jr.
Commissioner
Department of Public Welfare

Robert C. Baird
Assistant Commissioner
Department of Public Welfare

Barbara T. Stromer
Director, Assistance Payments Division
Department of Public Welfare

Gail M. Olson
Supervisor, Work Equity Project
Department of Public Welfare

Ronald Abato
Welfare Specialist, Sr., Work Equity Project
Department of Public Welfare

Jil Leeds Rivera
Coordinator, Work Equity Project
Department of Economic Security

Mary Ellen Dow
Budget Analyst
Department of Economic Security

Roger Froelich
WIN Support Services Supervisor
Department of Economic Security

Ron Putz
Management Services Supervisor
Department of Economic Security

Larry Simmons
Director, Balance of State CETA
Department of Economic Security

Gary Weisman
Balance of State CETA
Department of Economic Security

Mary Zierdt
Project Support Supervisor
Department of Economic Security

Richard Thorpe
Director, Career Guidance and Training Center
City of St. Paul

Readus Fletcher
Manpower II, Career Guidance and Training Center
City of St. Paul

The above-named experts may explain the provisions of the proposed Rule and why these provisions are necessary and reasonable.

We intend to introduce the following evidence:

State statutes and rules:

Minn. Stat. §15.162 et. seq. (amended, 1978)
Minn. Stat. Ch. 256 (amended, 1977)
Minn. Stat. Ch. 256B (amended, 1977)
Minn. Stat. Ch. 256D (amended, 1977)
Minn. Stat. §268.10
DPW 44, 55, and 202

Federal statutes and regulations:

Title IV of the Social Security Act, 42 USC §601 et. seq (amended, 1977)
Food Stamp Act of 1964, 1977 7 USC §2011 et. seq. (amended, 1977)
Comprehensive Employment and Training Act of 1973, as amended, 29 USC §801 et. seq. (amended, 1977)
Wagner-Peyser Act, 29 USC §981 et. seq. (amended, 1977)
Title VI of the Civil Rights Act of 1964, 42 USC §200001 et. seq.
Titles 7, 29, and 45 of the Code of Federal Regulations

Federal case law:

Crane v. Mathews

Other:

DOL grant document and modifications authorizing funding design, and operation of the Work Equity Project by the Department of Economic Security.

Section 1115 Proposal submitted by the Department of Public Welfare to the United States Department of Health, Education, and Welfare on 12-30-77.

Interagency agreement between DES and DPW on the operation and administration of the Work Equity Project.

Approved State WIN Plan for 1977, and revision submitted for approval.

WIN Handbook

DPW Insitutional Review Board membership list.

Correspondence from DHEW giving conditional approval of the 1115 Proposal.

Summary of Management Board policy decisions, from minutes of meetings.

Draft contract between DES and the City of St. Paul, for operation of WEP.

Summary description of the reimbursement formulae from WEP to local welfare agencies, and grant diversion formulae.

Description of components of IMS, Classroom Training, On-the-Job Training, Community Work Projects, and public service employment.

5/25/78

Edward J. Dirkswager, Jr.
Commissioner

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING THE WORK EQUITY PROJECT RULE 63

STATEMENT OF NEED

The above captioned proposed rule governs the administration of the Work Equity Project, a new demonstration project to be jointly administered by the Department of Public Welfare (hereinafter referred to as DPW), the Department of Economic Security (hereinafter referred to as DES), and the City of St. Paul, and sponsored by the United States Department of Labor (hereinafter referred to as DOL).

The need for the rule is based on the following statutory authorities:

Minn. Stat. §256D.04(9) (amended, 1977), which requires that the Commissioner of DPW "Issue emergency rules necessary to implement the Work Equity Program and promulgate all rules pursuant to Chapter 15 necessary to carry out the program so its demonstrational project may be administered uniformly throughout participating counties ..."

Minn. Stat. §256.736 (amended, 1977) requiring the Commissioner of DES to develop a training and employment program for recipients of AFDC.

The Food Stamp Act of 1964, 1977, 7 USC §2011 et. seq. (amended, 1977) and 7 CFR Part 93 requiring states to register non-exempt Food Stamp recipients with Employment Services.

Minn. Stat. §256D.11 requires every unemployed recipient of general assistance to register with employment services unless exempted by the provisions of subdivision 6 of that

statute. In 1977 special sub-sections were passed by the legislature specifically authorizing participation in WEP. Subdivision 1(a) provides:

> Every person who is a recipient of general assistance in a county designated by the Commissioner for participation in the work equity program and who is not employed shall be required, unless exempt by subdivision 6, to register for and participate in the work equity program.

This provides sufficient authority to mandate participation of general assistance recipients in WEP unless specifically excluded by the statutory provisions. General Assistance is funded completely by state and county money. No federal laws or regulations are directly applicable to this state program.

Certain individuals receiving AFDC must register for employment services as a condition for receiving their grants. Minn. Stat. §256.736 provides that county welfare agencies shall certify the appropriate individuals to the Department of Economic Security. Minn. Stat. §256.736, subd.5 provides that: "The Commissioner of Public Welfare shall cooperate with the Commissioner of Economic Security to promote the availability of training and employment opportunities on a state-wide basis."

The State's requirement of registration is consistent with the federal regulations governing administration of AFDC by the states. See, 42 USCA §§630 et. seq. (1974); 45 CFR Part 224. The regulations outline "WIN" the Work Incentive Program, mandated for certain AFDC recipients.

In Minnesota eligibility for Food Stamps is determined according to the regulations of the U.S. Department of Agriculture. No present state law or rule affects the implementation of the Food Stamp Program. The United States Code outlines the work requirements of Food Stamp recipients. 7 USCA §2014 (1977). The Department of Public Welfare administers the program at the state level according to federal regulations. The regulations require that "each able-bodied person between the ages of 18 and 65 ... shall register for employment ..." unless specifically exempt. See, 7 CFR §271.3(d). Such Food Stamp recipients are obligated to accept suitable work or lose eligibility for Food Stamps.

Minnesota state law requires formal state policies to be implemented through the rule-making process. Minn. Stat. §15.0411 et. seq. (1976). WEP proposes to begin operation under a temporary rule pursuant to the authority granted by the Legislature. Minn. Stat. §256D.04(9) (amended, 1977).

The Work Equity Project is necessary to fulfill these statutory obligations and to provide a more uniform and equitable work and training program for recipients of AFDC, GA, and Food Stamps. Work Equity does not create new work registration requirements, but rather combines existing requirements in a more integrated administrative system. WEP will offer at least as many services to its participants as would be received if they were enrolled in existing programs, and in many instances offer greater benefits and services. The project will not deprive recipients of any of their current

benefits. As well as creating new jobs through Community Work Projects, the project offers additional benefits not currently available, as are described elsewhere in this rule.

Furthermore, the project brings in additional federal monies to the State of Minnesota for work and training services to those recipients. In October, 1977, DOL signed a grant award with Minnesota DES for 6.8 million dollars. This funding may be significantly increased if the project is successfully implemented.

Additionally, the project will provide a basis for evaluating welfare program work requirements and job creation, which may influence welfare reform proposals at both the state and national levels.

Sections A. 2 and 3 are consistent with Minn. Stat. §256.72, §256.01, §256.736, and §256D.11, and provide for the participation of counties and recipients, and for the effective administration of the Work Equity Project.

Section B.1 explains the relationship of proposed DPW 63 to existing rules which govern the AFDC, GA, and WIN programs. DPW 63 will supersede only those parts of those rules that conflict with its provisions and will apply only in counties chosen for selection in WEP by the Commissioner of DPW (see Section B.5). The limited effect of this Rule is due to the temporary and demonstrational qualities of WEP, the inclusion of only certain recipient groups, and the fact that WEP primarily deals only with the work program elements of each program, and not other eligibility criteria.

B.2 and B.3 describe the joint administration of the project by DPW, DES, and the City of St. Paul. The responsibilities of each agency are set forth in written agreements. The City of St. Paul Career Guidance and Training Center and the Balance of State CETA division of DES are the "Prime Sponsors" for the project and as such will deliver the programmatic elements to participants. The agreements between each agency shall be available at each agency for public examination, and completed agreements are included in the Statement of Evidence. DES shall be responsible for supervising the basic programmatic elements of WEP, including supervision of the Prime Sponsors. DPW shall be responsible for administering the welfare programs associated with WEP, and shall act as liaison with the WEP counties. The Prime Sponsors shall be responsible for delivering WEP services to eligible recipients in their respective areas. A Management Board has been created to determine WEP policies and assist in the effective administration of the project. It consists of representatives from DPW, the DES Divisions of Balance of State CETA and Job Services, the City of St. Paul, and

the WEP Coordinator, who meet periodically.

B.4 states that WEP guarantee that it will meet all the statutory, regulatory, and administrative requirements of the WIN program unless specifically waived. The State WIN Plan has been revised and submitted to the Regional WIN office in Chicago for approval (included in the Statement of Evidence). The revision allows WEP to act as a WIN sponsor in the City of St. Paul and Economic Development Regions 6W, 7E, and 7W. WIN has it's statutory basis in Title IV of the Social Security Act and 42 USCA §630 et. seq. (1974), and is regulated in 45 CFR Part 224 and 29 CFR Part 56.

B.5 allows the Commissioner of DPW to determine what counties will participate in WEP. This authority is established in Minn. Stat. §256D.11 Subd. 1a. It is anticipated that the following areas will be served by WEP: Benton, Big Stone, Chippewa, Chisago, Isanti, Kanabec, Lac Qui Parle, Mille Lacs, Pine, Sherburne, Stearns, Swift, Wright, Yellow Medicine and the City of St. Paul in Ramsey County. Counties may be added or deleted, depending on the level of funding available and the success of the project.

The counties will be incorporated into WEP gradually, on a regional basis. The first site will be operational for several weeks before additional areas become operative. This is to provide experience in the most effective and efficient methods of implementing the project.

Since the project is to serve as a model for developing a national work and training program, a heterogeneous sampling of counties was necessary. Because of budget constraints and possible expansion later which may alter the geographic scope of the project, it was not possible to specify in the Rule which counties would be selected.

B.6 prohibits the use of WEP funds for any partisan or non partisan political activities, in accordance with CETA regulations and public policy considerations.

B.7 requires that local welfare agencies shall be reimbursed by WEP for any increased costs resulting from its operation, and requires that counties provide to DPW any information necessary to determine whether costs have increased. This is referred to as the "hold harmless" clause and is agreed to by both DES and DPW in their interagency agreement. Since WEP is designed to substitute for other work programs, it is not intended to save the counties their present administrative and program costs. Thus the efforts counties currently make in those programs must be maintained for WEP. The statutory basis for this section is found in Minn. Stat §256D.11 Subd. 4.

B.8 is based on Minn. Stat. §256D.11 Subd. 4 which allows the transfer of GA grant funds, unexpended because of the operation of WEP, from the local welfare agencies to the WEP Central Office. A "grant diversion formula" will be developed by DPW that will delineate the method and amount of funds to be transferred. The purpose of this is to replenish the WEP budget so that more people may be served by the project.

B.9 affirms that the civil rights of WEP participants shall not be abridged. Privacy of applicants and recipients will be protected in accordance with 45 CFR Part 205 (AFDC regulations) and the Minnesota Data Privacy Act, Minn. Stat. §15.162 et. seq. (amended, 1978).

B.10; 11: These sections describe the relationship of WEP to other state and federal laws, and to the United States Departments of Labor, Agriculture, and Health, Education and Welfare. The Commissioners of each agency are responsible to their respective agencies and grantees to inform them of statutory, regulatory, or administrative changes in WEP or related programs.

Mandatory participation of AFDC recipients is subject to approval by USDHEW of the Section 1115 Proposal submitted to them by DPW. The proposal requests that DHEW waive certain AFDC regulations and statutes (noted elsewhere in this Statement) under the authority of Section 1115 of the Social Security Act. Section 1115 gives authority to the Secretary of DHEW to waive AFDC regulations and statutes under that agency's purview in order to conduct demonstration projects. The proposal submitted by DPW is included in the Statement of Evidence. As a part of HEW's approval process, the project must be reviewed by an institutional review board to determine whether project participants are placed at risk. The requirements for this review are set forth in Crane v. Mathews, 417 F. Supp. 532 (1976); the review process is governed by 45 CFR Part 46. An institutional review board has been formed by the Commissioner of DPW and will be conducting its evaluation starting May 25th (a list of members and their credentials is included in the Statement of Evidence).

Mandatory participation of Food Stamp recipients is contingent upon approval by the U.S. Department of Agriculture, which has been requested by DPW.

Because the project is an experimental program primarily funded by the United States Department of Labor, the entire project's design and operation is contingent on DOL's approval and continued funding.

Section C defines various terms used in this Rule, which may or may not have the same definitions as used in other statutes, regulations or rules. The definitions are necessary to clarify the interpretation of provisions of the rule.

Section D.1: All AFDC and GA applicants and recipients residing in WEP counties are to be informed about WEP if it is either available to them or mandatory for them. The commissioner of DPW shall have the authority to decide which recipient groups in which counties shall be allowed to or mandated to participate in WEP. Because WEP is a demonstration project, its scope is necessarily limited by both funding levels and the concept that a pilot project is first conducted on a small scale. In the City of St. Paul only AFDC recipients will be served, at least in the first phase of the project. Because of the large numbers of AFDC recipients in the City of St. Paul, participation may be further limited to only new WIN-WEP registrants and possibly AFDC-Unemployed Fathers who are not actively involved in WIN. In Economic Development Regions 6-W and 7-E, recipients of all three programs will be served: if the WEP

budget allows. In region 7-W WEP will serve new AFDC WIN-WEP registrants, AFDC registrants not actively served by WIN, and recipients of GA and Food Stamps. The exact clientele being served in each vary may need to be changed as WEP begins operation and such changes will be delineated to affected local welfare agencies. The rule is drafted to allow the Commissioner to control the flow of recipients into the project as it is able to accommodate them.

Section D.2 lists the criteria by which AFDC and GA participants are exempted from mandatory participation in WEP. The criteria for AFDC recipients are unchanged from DPW 44, Title IV-A of the Social Security Act, and 45 CFR 224.20 which require registration with the work incentive Program (WIN, WEP) unless specifically exempted. GA exemptions are based on Minn. Stat. §256D.11 Subd. 6 and Minn. Stat. §256D.11 Subd. 12. These are essentially similar to those in DPW 55, except that 18 year old GA recipients attending school full time are automatically exempted from WEP registration. Under DPW 55 the local welfare agency has the authority to decide if that person should be exempt. The change was made to create greater uniformity between recipients of AFDC and GA within the same county.

Section D.3 requires that the local welfare agency refer both mandatory and voluntary AFDC and GA applicants or recipients to the local WEP center office for registration with WEP, if the particular recipient group is required to participate in WEP in that county. It also requires that the local welfare agency assist the individual

in obtaining transportation to and from WEP registration, if necessary.

Section D.4 allows exempt GA and AFDC recipients to voluntarily participate in WEP. AFDC voluntary participation is based on 45 CFR 224.20 and must be allowed by WEP. The second sentence of §D.4 may thus be applied only to GA volunteers. WEP will provide the opportunity to volunteer but one goal of WEP is to enable the project to be as cost effective as possible. Volunteers who have such extensive employment barriers that they would not be able to be gainfully employed may be excluded; this is consistent with Minn. Stat. §256D.01. Other services such as those of the DES Division of Vocational Rehabilitation may be available to assist volunteers so excluded.

Section D.5.a. specifies that WEP allowances of $30 or less per week are disregarded in determining the household's monthly AFDC or GA grant amount. This provides a financial incentive to WEP participants to participate in the training-related components of WEP; the $30/week amount is consistent with the training allowance paid in other CETA programs (29 CFR Part 97). The AFDC program currently exempts WIN payments of not more than $30/month. Similar CETA allowances of $30/week are currently disregarded in determining AFDC grant amounts, in accordance with 45 CFR §233.20(a)(4)(ii)(j).

No similar disregard currently exists in the GA program. This change is provided for in Minn. Stat. §256D.06 Subd. 1a and was included to produce greater equity and uniformity between the assistance groups, as well as to provide a financial incentive for

participation in training-related components.

Section D.5.b. allows reimbursement of actual training-related expenses to be disregarded as income. This is based on the concept that such reimbursement for actual expenses does not constitute available income for maintenance needs and as such is disregarded. This is consistent with AFDC program regulations set forth in 45 CFR §233.20 and DPW 44; and with GA program standards set by Minn. Stat. §256D.02 Subd. 10 and DPW 55. It ensures minimal financial disincentive to WEP participants.

Section D.5. b. and c are included for clarification. Hourly wages paid in Community Work Projects are earned income and are treated as such in both programs. Determination of income is handled in accordance with DPW 55 for GA participants, and DPW 44 for AFDC participants, unless otherwise specified in this rule.

Section D.5.e. is included because of the temporary nature of WEP, and an intent to create as much financial stability as possible in the event the project terminates. The section allows the assistance household to retain its "public assistance" status even though a WEP participant's income from subsidized employment reduces the public assistance grant (either AFDC or GA) to zero. This is based on waivers of certain AFDC regulations and statutes requested of DHEW (see 1115 Project Summary in Statement of Evidence) and on Minn. Stat. §256D.06 Subd. 1a. Such public assistance status allows the household to retain its Medical Assistance or General Assistance Medical Care, receive Title XX services, and eligibility for Food

Stamps, until such time that the statutory need is met by income from unsubsidized employment.

Section E describes the process and criteria used for referring Food Stamp recipients to WEP. In accordance with 7 CFR Part 93 and the Food Stamp Act of 1964 (as amended), Food Stamp recipients who are not exempt from work registration will be referred to and registered with the Job Service (JS) Division (also known as Employment Services) of DES as is currently done. After being registered with JS for 30 days that agency will review the recipient's current status. If the individual is not WEP-exempt as described in §E.2, s/he will be referred to WEP by the local JS office, as an extension of the JS process. Although the necessary authority exists to involve all Food Stamp-JS registrants, the WEP-exemption criteria were developed on the basis of which individuals might be best assisted, since the project has limited resources. Basically, those persons with some sort of job attachment but temporarily out of work are exempted. Food Stamp-JS registrants mandatorily referred to WEP can be required to participate in all WEP activities other than training or training-related components. Participation in the latter is not mandatory for Food Stamp recipients since no statutory authority exists to require participation in training-related activities, but the mandatory registrants may volunteer for any of WEP's services. The activities described in §E.3 are set forth in 7 CFR Part 93 as mandatory facets of registration.

Sections E. 4, 5, and 6 allow Food Stamp recipients who are exempt from registration with JS and/or WEP to volunteer for WEP. This may be limited by the Commissioner of DPW, however, if program or budget constraints necessitate serving fewer recipient groups. Regular JS services are still available to the recipient. Section E.6 also allows WEP to exclude from participation those volunteers whose employment barriers are so great that they preclude the person from obtaining gainful employment while WEP is operating. This is statutorily permissible since Food Stamp regulations do not provide for voluntary JS registrants, and assists the project's cost effectiveness by serving those persons who can most benefit from its services.

Section E.7 allows households who become ineligible for Food Stamp benefits because of increased income of a WEP participant to remain in WEP until the participant is placed in permanent unsubsidized employment. This is to prevent the circular effect that would otherwise result for the household if WEP eligibility terminated with Food Stamp eligibility. The household income would be lost and would necessitate reapplying for Food Stamps, and going through the same process again.

Section E.8 defines job attachment based on the reasons in the discussion of Section E, above.

Section F. describes the process by which disputes over WEP-exempt status for AFDC, GA, and Food Stamp recipients are resolved. This is based on the process used in the WIN program and is extended to

GA and Food Stamp recipients to create a more uniform and equitable policy. The WIN policy is based on 45 CFR §224.21 and provides opportunity to the recipient to contest the determination that s/he is not exempt from WEP registration. In order to safeguard the individual's interest, s/he is exempted until the issue is resolved through the fair hearing process (described in Section P). It also allows the local WEP center staff to provide further information to the local welfare agency that the person should be exempt rather than mandatory; this is to accommodate changes that have affected the person's exempt status, or new information that is obtained after the individual's referral to WEP.

Section G of the proposed rule describes registration procedures needed to inform Work Equity Project (WEP) staff and WEP registrants of the process involved, the information required, and the need to provide job market information to complete registration in WEP. Time limits are prescribed so that initiation of services available to WEP registrants shall not be unduly delayed. The description parallels WIN registration procedures, 29 CFR 56.21, which have been in effect in Minnesota Work Incentive Program (WIN) areas since 1975.

Section H describes appraisal and certification. The description is consistent with 29 CFR 56.22 mandating appraisal and certification in the WIN program. It is needed to establish a process whereby WEP registrants may be assessed for employability potential and service needs. The employability plan is a written plan for the

development of a registrant's employability potential leading to unsubsidized employment and is necessary so that the responsibilities of the WEP staff and the registrant are documented relative to attainment of unsubsidized employment within a prescribed time frame. Certification is the mechanism by which service needs are initiated and delivered.

Section I. 1 provides the authority for WEP Center staff to assign participants to employment or other WEP activity in accordance with the criteria in I., 1.a., through 3.b., and subject participants to deregistration if they do not accept the assignment. Section 1., 1.a. through 3.b., provides the criteria of appropriate work and training that must be met before participants can be required to accept a work or training assignment. These requirements are consistent with applicable Federal WIN regulations. See 29 CFR, Section 56.34. The procedures will be equally applied to Aid to Families with Dependent Children (AFDC), General Assistance(GA), and Food Stamp (FS) participants in WEP.

Section J.1. of Rule 63 provides for the general benefit of worker's compensation to individuals participating in the on-the-job training (OJT) or community work projects (CWP's) components described in Sections M4 and M6. This benefit is consistent with 29 CFR §92.24 (a)(i) which delineates the benefits available to participants in programs funded under the Comprehensive Employment and Training Act (CETA), and provides the participant with medical and accident insurance, as well as income maintenance insurance. WEP is to be operated through a grant from the U.S. Department of Labor composed of CETA and WIN funds.

Section J.2. provides for medical and accident insurance coverage where others similarly engaged are not covered by an applicable worker's compensation statute; i.e., in classroom training These benefits are consistent with 29 CFR §98.24(a)(2) which delineates the benefits available to participants in programs funded under CETA.

Section J.3. provides assurance to each participant in an on-the-job training (OJT) or community work project (CWP) of his/her entitlement to health insurance, unemployment insurance, and other employee benefits to the same extent as available to other employees similarly employed and to working conditions neither more nor less favorable than those of other employees similarly employed. These benefits are consistent with 29 CFR §98.24(b), which delineates benefits available to participants in CETA-funded programs.

Section K authorizes payments to those individuals who meet specific conditions for which the payment is authorized and is needed to delineate the allowances and incentives available to WEP participants. Such an individual must be a WEP participant and an AFDC, GA, or Food Stamp recipient.

Section K.1. It is WEP policy that WEP provide participants at least, if not more than, the benefits they would be provided under the current WIN program. For example, an incentive of $30 per week will be paid for participants in classroom training, rather than the $30 per month currently allowed in the Work Incentive (WIN) program for AFDC recipients. The $30 per week maximum for participants in WEP classroom training, etc. is consistent with CETA regulations governing incentive allowances for persons receiving public assistance,

as found in 29 CFR §95.34(g).

The decision not to authorize incentive pay for participation in the intake functions was made by the WEP Management Team on January 26, 1978. It was determined by the Team that incentive allowances begin when an individual reports to a component/activity, not including registration, orientation, and appraisal. This policy allows payment of an incentive only when an individual actually participates in a scheduled activity, as recorded on a status change form, in the WEP reporting system. This is consistent with WIN regulations.

Section K.2. The rate of 13 cents per mile reimbursement to WEP participants for the actual number of miles driven because of WEP participation, which is two cents more than the WIN rate of 11 cents per mile, was determined by the WEP Management Board on January 26, 1978. The limit on the payment of such mileage to 100 miles per day for nonsalaried components and for no more than 4 weeks, or until individuals placed in employment, OJT, PSE, or CWP receive their first full paycheck or grant adjustment reflects new work-related expenses, was also determined by the WEP Management Team. Thereafter, the participant pays directly for these expenses from his/her income; in AFDC and GA these are then deducted as work expenses in computing the need (grant amount).

Section K.3. Authority is needed and was given the WEP Center staff to determine subsistence levels because the two Prime Sponsors are the responsible operating units of WEP. Prime Sponsors have guidelines and procedures for determining subsistence. WEP Center staff

decisions will be reviewed by the WEP Central staff. Decision making at the lowest possible level is desirable to assure fast, effective action for the participant. The local WEP Center staff's participation in decisions also encourages commitment and more effective service delivery.

Section L. is needed to allow WEP staff to authorize funds for the relocation of WEP participants in order that they may become permanently employed and self-supporting. Relocation allowance is provided only to an individual who concurs with the relocation and when the wage rate of the job in the new location meets full need, as determined by the state in which the individual relocates. This criterion is consistent with 29 CFR Section 56.33 and WIN guidelines which have provided adequate procedures for purposes of relocation. The Federal WIN guidelines on relocation will be followed. Since no waiver was secured from the Department of Labor (DOL), it will be necessary to obtain approval from DOL whenever participants are relocated to states non-contiguous to Minnesota.

Section M. describes WEP components. The components and services described are established pursuant to the terms of a contractual agreement between DOL and Minnesota Department of Economic Security (MDES) authorizing the establishment of a Work Equity Demonstration Project (WEP).

The Employability Development Planning component provides program orientation, in-depth assessment, special support services, or extraordinary support services to individuals for whom such services

appropriate, as determined through the appraisal and certification process. It is necessary in order that participants not immediately available for assignments to employment or training will receive necessary services which will lead to eventual participation in other WEP components.

The Intensive Manpower Services component provides participants who are appraised and certified as ready for employment with employability services to assist them in obtaining unsubsidized work. It is recognized that unsubsidized jobs will not be immediately available for all participants in this component; therefore, it will be necessary to develop subsidized employment in order that each participant available for work may be guaranteed a job opportunity at the prevailing wage.

The Classroom Training component provides a resource for vocational or other institutional training, as well as basic or remedial education. The component is needed for those WEP participants who are appraised as requiring such types of training as part of an employability development plan leading to unsubsidized employment.

The On-the-Job Training component is needed to provide participants with placement in permanent private or public jobs, which includes training at the job site provided by the employer. Participants available for work but inexperienced in the occupation which they are seeking employment will require such training. An employer who provides on-the-job training to participants is reimbursed by WEP for extraordinary training and supervisory costs as an incentive

for hiring a WEP participant who may be in a less competitive position for available jobs than others in the same labor market.

The Transfer component provides registrants with an opportunity for participation in other eligible Federal and state-funded employment or training programs when it is deemed appropriate as part of the individual's employability development plan. The component offers the additional resources of other existing programs which can best serve the employability or support service needs of the participant.

The Community Work Projects (CWP) component is unique to WEP. The purpose of community work projects is to create suitable subsidized employment opportunities at a prevailing wage for that type of work in the community, and on a scale sufficient to meet the needs of recipients. It is anticipated that participants will average 13 weeks of overall participation in the CWP component of WEP. CWP's will provide participants with an opportunity to enhance their work behaviors, work attitudes, and to porvide intensive work adjustment opportunities while learning a work skill.

Prior to December 16, 1977, there was a 12-week limitation governing participation in the community work projects component. Based on the reasons stated below and, with concurrence of Regional and National DOL officials and community support groups, the WEP Management Team adopted the principle that "participants ought not to be limited to 12-week cycles in the CWP component, but rather that the length of participation should be determined by participant progress, as measured by a continuous assessment process."

Reasons for Removing the 12-Week Limitation on Community Work Projects:

(1) Prior to participating in a component, a participant will be assisted in developing an employment plan. If the employment plan involves a CWP, short-range goals will be included in the plan. In order to become more employable, the registrant will strive to reach these short-range goals; i.e., to increase motivation and attitudes toward work, to improve interpersonal skills in relationships with co-workers and supervisors. When short-range goals are met, the participant will be re-evaluated to determine whether further benefit can be derived from extended participation in the community work projects component. If a 12-week limit were to be imposed, a participant's progress could be interrupted prior to achievement of the goals outlined in the employment plan, and such result should be avoided.

(2) Financial impact on the participant was considered by the Management Team in removing the 12-week limitation on CWP's. The wage and allowance structure of the Work Equity Project differs between work and non-work components. An individual participating in a CWP for a limited 12-week period would receive the prevailing wage of that particular CWP, would return to employability development planning (EDP) for reappraisal, and receive an allowance below the CWP wage level. If it is determined that the participant could benefit further from CWP, he/she might re-enter the component, depending on the particular CWP slot available, at a lower prevailing wage, which would result in a disincentive to participation.

It is likely in all instances that a financial discrepancy would exist between a prevailing wage and a recipient's grant plus the incentive allowance. Continual review and readjustment of grants by county welfare departments would be disruptive for participants in budgeting family expenditures. Readjustments also would adversely affect the counseling process and create burdensome operational difficulties. Based on the reasons explained herein, the Commissioner of Public Welfare also opposes a restrictive 12-week limitation.

(3) Data elements of the WEP management reporting system can be used to encourage counselors and other WEP field staff to reassign participants in CWP's who are not achieving their short-range goals. Participants who have fallen short of their goals, but have made some progress, or who have been determined able to benefit from additional CWP experience, will be allowed to continue in their assignments.

(4) If this policy had not been adopted prior to the drafting of the rules, the participant would have been required to leave the CWP component for one week to participate in an appraisal, even if it were untimely and inappropriate.

Work Equity staff met with representatives of the Minnesota Coalition for Welfare Reform (MCWR) early in December. MCWR also raised concerns regarding a 12-week limitation on CWP's. The Coalition argued this issue on two major grounds: The first concerned the artificial restrictive barriers to enhancing employability; the second involved the fluctuation in family income and the resultant difficulties in financial planning and budgeting. The Management Board and MCWR were substantially in agreement on this issue.

Also, WEP administration is making the strongest effort possible to avoid the displacement of regular employees in the process of creating public service (PSE) jobs. To effectuate that commitment, WEP is requiring that where a collective bargaining agreement exists, employers sign a statement to the effect that the CWP contract does not conflict with the bargaining agreement.

The Public Service Employment (PSE) component provides participants with access to CETA PSE Title VI positions. As permanent, unsubsidized jobs may not be immediately available to all work-ready participants, transitional work opportunities will need to be created until unsubsidized jobs become available. The CETA Prime Sponsors are major developers of PSE jobs, and have agreed to accept referral of WEP participants to Title VI vacancies. In addition, efforts will be made to place participants in PSE jobs where they will have an opportunity to retain those positions as unsubsidized employment.

Section N is necessary to clarify the point that registration with WEP does not, in itself, make WEP participants employees of the State or Federal Government, or make them subject to laws and regulations that pertain to State or Federal employment. This policy extends to the State the WIN policy in 29 CFR Section 56.45 that pertains to non-federal employee status.

Section O describes the supportive social services available to help Work Equity registrants obtain and maintain training classroom and job placements. These services are the same services authorized

by Section 402(a)(19)(G) of the Social Security Act, 45 CFR Part 224.30 and DPW 202. The main difference is that these services are mandated for persons receiving AFDC. Work Equity will also make these services available to General Assistance and Food Stamps recipients registered with the project in order to create a more equitable and uniform program.

Section P is necessary to establish the process whereby WEP participants may appeal agency actions which affect or may affect their welfare benefits and/or their registration with the Work Equity Project. Other provisions allow participants to grieve actions under WEP which do not involve the threat of sanctions. The rationale for Section P is that each individual is entitled to a hearing in order that there may be an objective review of the facts surrounding the decision that the person has failed or refused to participate. The adjudication system ensures formal opportunities for the recipient to explain and to obtain explanation of the facts. This adjudication system ensures that no one is arbitrarily denied benefits.

Section P. 3 delineates the issues which may be decided under the WEP adjudication system. Grievances, as described in Section P.3.a., are consistent with the definition of a grievance in WIN, as contained in 29 CFR §56.1. The right of a WEP participant to appeal a grievable issue through the WEP adjudication system is necessary in order to assure the rights of those persons who are registered in WEP. The sanctionable actions for which a participant may be deregistered from WEP are contained in Section P.3.c. Items 1, 3,

and 5 detailed therein involve failure or refusal to participate in WEP without good cause, and are consistent with adjudicable issues for WIN registrants contained in 29 CFR §56. Authority for items (2) and (4) relating respectively to refusal to accept suitable child care, and quitting a suitable job without good cause, is found in the Federal WIN Handbook (Revised Second Edition), Chapter 9, I., B.3. The WIN Handbook has its authority pursuant to 45 CFR §224.10, and is binding on state and local WIN operations.

Section P.4. provides for an informal conciliation period in an attempt to resolve grievances and sanctionable issues, and to obviate the need for hearings. Provision for such conciliation period is found in existing WIN regulations at 29 CFR §56.23. These measures have been effective in resolving participant-project controversies before either part has had to resort to the more formal procedures of the hearings/appeals system. Where the conciliation period is not successful, this Section provides for advance notice to the participant of his/her intended deregistration, and the means whereby s/he may appeal the proposed action at a hearing conducted by a hearing officer of the Department of Economic Security. Such hearings will be conducted in accordance with existing procedures for the WIN program, which are set forth in Minn. Stat. §256.736, Subd. 4 (Supp. 1977), and in 29 CFR §§56.66 through 56.75.

Section P. 5. is consistent with existing WIN procedures in that it provides for an appeal from an adverse decision of the Minnesota Department of Economic Security (MDES) hearing officer. This appeal is conducted as a review of the record by the Commissioner of

Economic Security, or his duly-authorized representative, and is available to recipients of AFDC and others interested in issues involving AFDC recipients. The authority for an appeal at this level is found in Minn. Stat. 256.736, Subd. 4 (amended 1977), and 29 CFR §§56.66 through 56.69. Also contained in this paragraph are provisions for appeals to the National Review Panel of the U.S. Department of Labor, in accordance with 29 CFR §256.736, Subd. 4 (amended, 1977), and Minn. Stat. §268.10, Subd. 8 (1976).

Section P. 6. is consistent with the hearing procedures required by Minn. Stat. 256.045, Subd. 2 and Subd. 3 (1976).

Section P. 7. is consistent with the post determination actions mandated by Section 402(a)(19)(G) of the Social Security Act and 45 CFR §224.51 and §224.76 for AFDC recipients enrolled in work and training programs as a condition of eligibility for AFDC. In order to create a more equitable and uniform adjudication system the same post determinate actions available to AFDC recipients will be extended to General Assistance and Food Stamp recipients registered in Work Equity. Although AFDC recipients have an ultimate level of appeal to the WIN National Review Panel, this Review Panel will not be available to GA and Food Stamp recipients because it is statutorily empowered only to review appeals by AFDC recipients.

Section P. 8. is consistent with post determination actions involving sanctions mandated by Section 402(a)(19)(G) of the Social Security Act and 45 CFR Part 224.51 for AFDC recipients. In order to create

a more equitable and uniform adjudication system, the same post determination actions applicable to AFDC recipients will be extended to General Assistance recipients. Food Stamp recipients shall be subject to the procedures specified in the Food Stamp Act.

All above-mentioned hearings and appeals are necessary to provide access to due process for AFDC recipients registered with WEP, and to safeguard the integrity of legislation governing programs to which these individuals are assigned as a condition of their eligibility for welfare benefits.

The last sentence of Section P.9. allows WEP Center staff to refuse registration to a person referred to them by the welfare agency, who was previously deregistered as the result of criminal or other activities which presented a hazard to WEP staff or to other WEP participants. This is necessary to safeguard staff and participants from individuals who have demonstrated the potential to physically endanger or harm others in the Work Equity Project. This clause is consistent with Federal WIN regulations at 29 CFR §56.77(c).

Section Q is necessary to establish conditions under which individuals are to be deregistered from WEP, and to provide for procedures under which such deregistrations are to be accomplished. Conditions and procedures for deregistration are consistent with those applicable to WIN participants, as contained in 29 CFR §56.50.

Section R is necessary to ensure that if some part or parts of the rule are adjudged invalid, the rest of the rule will remain effective.

5/25/78

Edward J. Dirkswager, Jr.
Commissioner

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF PERMANENT RULES OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING THE WORK EQUITY PROJECT, RULE 63

CERTIFICATE OF DELIVERY
SECRETARY OF STATE
LIST

I hereby certify that the attached 483 labels, 4 sheets constitute the complete list of persons, associations, and other interested groups who as of 10:00 o'clock A.M. this 15th day of May, 1978, have requested pursuant to M.S. 1976, 15.0412, that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

SECRETARY OF STATE

Joan Anderson Growe

BY Cheri S. Mattson

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF PERMANENT RULES OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING THE WORK EQUITY PROJECT, RULE 63

AFFIDAVIT OF ADDITIONAL MAILING

DIANE LYNN HENDERSON, being first duly sworn, deposes and says:

That on the 16 day of May, 1978, at the City of St. Paul, County of Ramsey, State of Minnesota, in addition to mailing the attached Notice of Hearing to all persons and associations listed on the Secretary of State's list, she also served the attached Notice of Hearing by depositing in the United States mail at said City of St. Paul, a true and correct copy thereof, properly enveloped, with postage prepaid to the following agencies:

All Minnesota County Welfare Departments
All Minnesota Human Service Boards
All Minnesota Area Mental Health Boards
All Minnesota State Hospitals

Diane Lynn Henderson

Subscribed and sworn to before me
this 24th day of May.
1978.

Margaret Holt

MARGARET HOLT
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires Sept. 22, 1984

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF PERMANENT RULES OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING THE WORK EQUITY PROJECT, RULE 63

AFFIDAVIT OF RECEIPT OF THE SECRETARY OF STATE'S LIST

DIANE LYNN HENDERSON, being duly sworn on oath deposes and says:

1) That she is an employee of the Special Services Division of the Department of Public Welfare for the State of Minnesota.

2) That on the 16 day of May, 1978, she went to the Secretary of State's office for the State of Minnesota and requested a current list of all representatives of associations or other interested groups or persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules pursuant to M.S. 15.0412.

3) That on the 16 day of May, 1978, in response to the above request, the Secretary of State provided her with such a list, a copy of which is attached hereto and incorporated by reference.

Further affiant sayeth not.

Diane Lynn Henderson

Subscribed and sworn to before me

this 18 day of May,

1978.

Margaret Holt

MARGARET HOLT
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires Sept. 22, 1984

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF PERMANENT RULES OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING THE WORK EQUITY PROJECT, RULE 63

AFFIDAVIT OF MAILING

DIANE LYNN HENDERSON, being first duly sworn, deposes and says:

That on the 16 day of May, 1978, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Hearing by depositing in the United States mail at said City of St. Paul, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons and associations at the addresses listed on the attached Certificate of the Secretary of State.

Diane Henderson

Subscribed and sworn to before me this

18th day of May, 1978

Notary Public,

Ramsey County, Minnesota

My Commission expires

Sept. 22, 1984

MARGARET HOLT
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires Sept. 22, 1984

Depts Exh. jmp
6-19-78

RECEIVED
MAY 25 1978
OFFICE OF HEARING EXAMINERS

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF PERMANENT RULE OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING THE WORK EQUITY PROJECT, RULE 63

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that public hearings on the above-entitled matter will be held at the following dates, times, and locations and continuing until all persons have had an opportunity to be heard:

June 19, 1978, 9:00 A.M., State Office Building, Room 81, Wabasha Street (between Aurora and Fuller), St. Paul, Minnesota 55155.

June 22, 1978, 10:00 A.M., Council Chambers, St. Cloud City Hall Annex, 4th Avenue South, St. Cloud, Minnesota 56301.

June 23, 1978, 9:00 A.M., Appleton Civic Center Auditorium, Appleton, Minnesota.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted at the hearing. In addition, written materials may be submitted by mail to Natalie Gaull, Office of Hearing Examiners, 1745 University Avenue, St. Paul, Minnesota, 55104, (612) 296-8114, either before the hearing or within five working days after the public hearing ends, or for a longer period not to exceed 20 days if ordered by the hearing examiner.

This rule establishes the administration and operation of the Work Equity Project (WEP). The purpose of the Work Equity Project is to provide employment and training services in a uniform manner to recipients of General Assistance, Aid to Families with Dependent Children, and Food Stamps, and to provide a model for evaluation of certain national welfare reform proposals in counties designated by the Commissioner of Public Welfare. Among the provisions covered in the rule are introduction, administration, definition of terms, participation of AFDC and GA recipients, participation of Food Stamp recipients, exemption determination disputes, registration procedures, appraisal certification, appropriate work and training criteria, general benefits for program participants, allowances and incentives for WEP participants, relocation assistance, the WEP components, non-state or federal employee status, support services, WEP adjudication system, deregistration, and severability clause.

Copies of the proposed rule are now available and one free copy may be obtained by writing to Gail Olson, Work Equity Project, Minnesota Department of Public Welfare, Fourth Floor, Centennial Office Building, St. Paul, Minnesota, 55155, (612) 296-1834. Additional copies will be available at the door on the date of the hearing. The agency's authority to promulgate the proposed rule is contained in Minn. Stats. 256.736 and 256D.04. A "statement of need" explaining why the agency feels the proposed rule is necessary and a "statement of evidence" outlining the testimony they will be introducing will be filed with the Hearing Examiners Office at least 25 days prior to the hearing and will be available there for public inspection.

Please be advised that Minn. Stat. Chapter 10A, requires each lobbyist to register with the Ethical Practices Board within five days after he commences lobbying. Lobbying includes attempting to influence rule making by communicating or urging others to communicate with public officials. A lobbyist is generally any individual who spends more than $250 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than $250 per year or five hours per month at lobbying. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota, 55155, phone number (612) 296-5615.

EDWARD J. DIRKSWAGER, JR.
Commissioner

Dated: May 2, 1978

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF PERMANENT RULES OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING THE WORK EQUITY PROJECT, RULE 63

ORDER FOR HEARING

IT IS HEREBY ORDERED that a public hearing on the above-captioned rule be held in the State Office Building, Room 81, Wabasha Street (between Aurora and Fuller), St. Paul, Minnesota, 55155, commencing at 9:00 A.M., the Council Chambers, St. Cloud City Hall Annex, 4th Avenue South, St. Cloud, Minnesota, 56301, commencing at 10:00 A.M., and the Appleton Civic Auditorium, Appleton, Minnesota, commencing at 9:00 A.M. and continuing until all persons have had an opportunity to be heard.

IT IS FURTHER ORDERED that a Notice of Hearing be mailed to all persons or representatives of associations or other interested groups who have registered their names with the Secretary of State for that purpose.

IT IS FURTHER ORDERED that the Notice of Hearing be published in the State Registor.

Edward J. Dirkswager, Jr.
EDWARD J. DIRKSWAGER, JR.
Commissioner

Dated: May 8, 1978

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF PERMANENT RULES OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING THE WORK EQUITY PROJECT, RULE 63

AMENDED
ORDER FOR HEARING

IT IS HEREBY ORDERED that a public hearing on the above-captioned rule be held in the State Office Building, Room 81, Wabasha Street (between Aurora and Fuller), St. Paul, Minnesota, 55155, on June 19, 1978, commencing at 9:00 A.M., the Council Chambers, St. Cloud City Hall Annex, 4th Avenue South, St. Cloud, Minnesota, 56301, on June 22, 1978, commencing at 10:00 A.M., and the Appleton Civic Auditorium, Appleton, Minnesota, on June 23, 1978, commencing at 9:00 A.M., and continuing until all persons have had an opportunity to be heard.

IT IS FURTHER ORDERED that a Notice of Hearing be mailed to all persons or representatives of associations or other interested groups who have registered their names with the Secretary of State for that purpose.

IT IS FURTHER ORDERED that the Notice of Hearing be published in the State Register.

Edward J. Dirkswager, Jr.
EDWARD J. DIRKSWAGER, JR.
Commissioner

Dated: June 7, 1978

STATEMENT OF COMPLIANCE WITH MANUAL OF RULE MAKING PROCEDURES

I, Special Assistant Attorney General Beverly Jones Heydinger, do hereby declare that I have examined the proposed rules and all related documents and that, based on them and my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures has been followed. Any exceptions are noted below.

Beverly Jones Heydinger
Special Assistant Attorney General

Dated: December 19, 1978

PROPOSED

DPW 63 Administration of Work Equity Project

A. Introduction

1. This rule governs administration of the Work Equity Project (WEP) as authorized by Minn. Stat. §256.736 (amended, 1977) and §256D.04 (amended, 1977). WEP is a work and training demonstration project jointly administered by the Minnesota Department of Public Welfare (DPW), the Minnesota Department of Economic Security (DES), and the City of St. Paul, and funded through an initial grant of $6.8 million by the United States Department of Labor (DOL) through the Comprehensive Employment and Training Act (CETA) and the Work Incentive Program (WIN). The purpose of the project is to provide employment opportunities, training, and services in a uniform manner to applicants and recipients of General Assistance, Aid to Families with Dependent Children, and Food Stamps, and to provide a model for evaluation of certain national welfare reform proposals. The provisions of this rule are to be read in conjunction with Title IV of the Social Security Act, 42 U.S.C. §601 et seq. (amended, 1977); the Food Stamp Act of 1964, 1977, 7 U.S.C. §2011 et seq. (amended, 1977); the Comprehensive Employment and Training Act (CETA) of 1973, as amended, 29 U.S.C. §801 et seq. (amended, 1977); Titles 7, 29, and 45 of the Code of Federal Regulations; Minn. Stat. Chaps. §256, §256D, and §268.10; and DPW 44, 55, and 202.

2. This rule is binding on DPW and DES all county welfare and human services boards (hereinafter called local welfare agencies), and applicants and recipients as defined and outlined in this rule.

3. The Commissioner of DPW and the Commissioner of DES shall issue handbooks and informational materials to local welfare agencies, to local offices of the Department of Economic Security and the Prime Sponsors, and to people who are referred to WEP, to implement this rule in an orderly and uniform manner.

B. Administration

1. WEP is a pilot project designed to extend the scope and services available through the WIN program, the General Assistance Work Program, and Food Stamp work registration. In those counties selected by the Commissioner of DPW for participation in WEP, this rule shall be read in conjunction with DPW 44, 55, and 202; any differences shall be resolved in favor of this rule. In those counties not selected for participation in WEP, provisions of DPW 44, 55 and 202 shall apply without change.

2. WEP shall combine the efforts and resources of DPW, DES, and the City of St. Paul to provide appropriate employment or training for designated public assistance applicants and recipients and shall operate in conjunction with the St. Paul and Minnesota Balance of State Prime Sponsors designated pursuant to CETA.

3. Agreements between, among, or within DPW, DES, St. Paul CETA Prime Sponsor and the Balance of State CETA Prime Sponsor shall specify the obligations that they have for the administration of WEP. A representative of each agency shall be named to a Management Board which shall meet regularly to coordinate implementation and operation of WEP. All parties to the agreements shall have copies of the agreements on file, which are public documents available for examination during business hours.

4. WEP shall provide all services traditional to WIN and shall increase the opportunities for training and jobs available through a work incentive program to additional numbers of public assistance recipients.

5. The Commissioner of DPW shall select the counties to participate in WEP, shall determine the date such participation shall begin and shall supervise WEP in the local welfare agencies in accordance with this Rule and with equitable standards for assistance and administration which shall be mandatory for all counties selected for participation in WEP.

6. No funds allocated to WEP shall be used for any political activity or to further the election or defeat of any candidate for public office; nor shall they be used to provide services, or for the employment or assignment of personnel in a manner supporting or resulting in the identification of programs conducted pursuant to the Social Security Act with:

a. Any partisan or non-partisan political activity or any other political activity associated with a candidate, or contending faction or group, in an election for public or party office, or lobbying for any matter at public issue;

b. Any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any such election;

c. Any voter registration activity.

7. The local welfare agencies shall be reimbursed for increased local expenditures resulting from operation of the Work Equity Project. DPW shall establish pre-WEP baseline data on county income maintenance, medical, social service, and administrative costs. Local welfare agencies will provide WEP with staff and other resources equivalent to the resources the agency would otherwise be required to allocate to other work and training programs and related services if the applicants and recipients had not been placed in WEP. WEP will reimburse counties for any additional costs incurred by the counties which are directly attributable to WEP, in a manner to be agreed upon between DPW and DES.

In order to determine the reimbursement formulae, counties shall provide necessary information to DPW and shall enter GA and Food Stamp information on the DPW case information system, as required by the Commissioner of DPW.

Payments to or from WEP and the local welfare agencies shall be made on a quarterly basis.

8. Income maintenance funds which are not expended by local welfare agencies as a result of a recipient's participation in WEP shall be diverted to WEP, in accordance with procedures to be established by DPW and DES. The reimbursement formulae, referred to in B. 7., above, shall be used to determine the amounts, if any, to be diverted to WEP.

Payments to or from WEP and the local welfare agencies shall be made on a quarterly basis.

9. WEP administration shall not deny any person his/her civil rights. The program shall give due regard to the privacy rights of applicants and/or recipients, in accordance with 45 CFR Park 205 and the Minnesota Data Privacy Act, Minn. Stat. §15.162 et seq. (amended, 1978). No disclosure shall be made of personally identifiable data from records or from applicants or recipients except as permitted by law.

10. Notwithstanding any provisions of this rule, administration of WEP is subject to changes in state or federal law. The Commissioner of DPW shall notify the local welfare agencies of changes affecting the participation of public assistance recipients in WEP. The Commissioner of DES shall notify the local offices of the Department of Economic Security and the Prime Sponsors of changes in WEP and related programs.

11. Operation of WEP is subject to approval by the U.S. Department of Health, Education, and Welfare for the participation of AFDC participants; the approval of the United States Department of Agriculture for the participation of Food Stamp recipients; and the approval of the entire project by the United States Department of Labor (DOL). Operation of WEP is also contingent upon sufficient funding from the DOL. The Prime Sponsors shall give prompt notice to each participant of the project's termination and shall make every reasonable effort to assist each

C. Definitions

1. AFDC (Aid to Families with Dependent Children): A program authorized by Title IV of the Social Security Act, 42 U.S.C. §601 et seq. (amended, 1977), to provide financial assistance and social services to needy families with dependent children.

2. Applicant: A person who requests AFDC, GA, or Food Stamps from the local welfare agency, whose eligibility has not yet been determined.

3. Appraisal: The interview of a WEP participant by WEP Center staff including support service staff to determine employability potential, the need for support services, and to initiate an employability plan.

4. Certification: A written notice by the support service staff that necessary support services have been arranged or are available to enable a WEP participant to accept employment, training, or services; or that no such services are needed and that the individual is at that time ready for employment or training.

5. Classroom Training (CT): Vocational or other institutional training, including basic or remedial education, conducted in a non-worksite setting.

6. Commissioner of Economic Security: The Commissioner of the Minnesota Department of Economic Security or his/her designee.

7. Commissioner of Public Welfare: The Commissioner of the Minnesota Department of Public Welfare or his/her designee.

8. Community Work Project (CWP): A subsidized work component that fulfills a public service and provides an individual an opportunity to develop skills and basic work habits helpful in securing unsubsidized employment.

9. Complaints: (See Grievance)

10. Component: A structured, regularly scheduled program activity for certified WEP participants.

11. Deregistration: Termination of an individual's WEP registration.

12. DES: The Minnesota Department of Economic Security.

13. DHEW: The United States Department of Health, Education, and Welfare.

14. DOL: The United States Department of Labor, specifically, its Employment and Training Administration.

15. DPW: The Minnesota Department of Public Welfare.

16. Employability Plan: A written plan for a WEP participant that sets forth that individual's occupational goal, and the employability and support services necessary for him/her to reach that goal.

17. Employability Services: Employment and training services provided by the WEP Center to improve the work skills a participant and aid him/her to find employment.

18. Exempt: An AFDC, GA, or FS applicant or recipient who is not required to register for employment or training under the Work Equity Project as a condition of eligibility for welfare benefits.

19. Food Stamp Program: A program authorized by the Federal Food Stamp Act of 1964, 1977, 7 U.S.C. §2011 et seq. (amended 1977), to provide assistance to needy families and individuals.

20. General Assistance (GA): A program authorized by Minn. Stat. Chap. 256D to provide financial assistance to needy families and individuals.

21. General Assistance Medical Care (GAMC): A program authorized by Minn. Stat. §Chap. 256D to provide assistance to families and individuals in need of medical care.

22. Grievance: A written complaint initiated by a WEP participant. Grievances may include, but are not limited to, disputes over assignments where the participant is not refusing the assignments; alleged discrimination; and complaints about eligibility for or amounts of WEP allowances.

23. Hearing Officer: The hearing officer designated by DES to hear and decide or make recommendations on issues relating to grievances and sanctionable issues involving WEP participants.

24. Incentive Payment: A cash payment to an individual, who is participating in a non-wage WEP component. The incentive payment is to be an inducement to the participant to engage intensively in WEP activities as preparation for entering employment; it does not compensate or reimburse a participant for any costs that are incurred in connection with WEP participation.

25. Income Maintenance Funds: Amounts of AFDC or GA to meet basic living costs of eligible individuals in accordance with established standards of need.

26. Income Maintenance Unit (IMU): The unit of the local welfare agency which determines individual eligibility for AFDC, GA, or Food Stamps.

27. Intensive Manpower Services (IMS): Structured employment-related services; including job development and placement services offered to WEP participants so they may more readily obtain unsubsidized employment.

28. Job Service (also known as State Employment Service): A program within the Department of Economic Security, established in accordance with the provisions of the Wagner Peyser Act, 29 U.S.C. §981 et seq. (amended, 1977).

29. Management Board: Representatives from the City of St. Paul CETA, Balance of State CETA, DES, DPW, and WEP responsible for the design and administration of WEP.

30. Mandatory: A person who is not exempt.

31. Medical Assistance (MA): A program authorized by Title XIX of the Social Security Act to provide assistance to needy families or individuals in need of medical care, implemented in Minnesota by Minn. Stat. Chap. 256B.

32. Medical Verification: A statement signed by a physician or licensed psychologist which attests to an individual's ability or inability to accept employment or participate in other WEP activity. Oral testimony presented in person by such physician or licensed or certified psychologist may also be accepted as medical verification.

33. Non-Wage Component: An activity, such as IMS, Employability Development Plan (EDP), and Classroom Training, wherein allowances and incentives are paid for suitable participation.

34. On-the-Job Training (OJT): Employment of a WEP participant during which he/she is provided with employment training at a work site under a contractual agreement between a public or private employer and the Prime Sponsor. The employer is reimbursed for the extraordinary costs of such training.

35. Participant: An AFDC, GA or Food Stamp applicant or recipient who has registered with WEP.

36. Prime Sponsor: A public agency (or private, non-profit corporation) which operates WEP within the jurisdiction(s) in which it is expressly authorized by the DOL to administer funds authorized pursuant to CETA Titles I and II.

37. Public Service Employment (PSE): Subsidized transitional employment with non-profit employers or public employers, funded by CETA.

38. Recipient: An individual who has been determined eligible to receive AFDC, GA or Food Stamps.

39. Referring Agency. The local welfare agency, or local Job Service office responsible for referring applicants and recipients to the WEP center.

40. Sixty-Day Counseling: Counseling and other services provided by the support service staff to certified WEP participants who have been determined to have refused to participate without good cause. Its purpose is to encourage such individuals to return to active WEP participation.

41. Subsidized Employment: Work in a job for which the individual's wages and benefits are directly federally subsidized.

42. Support Services: Those social services provided or arranged by support service staff necessary to enable an individual to engage in employment or other WEP activity.

43. Support Service Staff: Those counselors from local welfare agencies or WEP Center Offices who provide support services to WEP applicants or recipients.

44. Title XX Services: A program authorized by Title XX of the Social Security Act to provide social services to families and individuals in need.

45. Transfer: A period during which a participant is assigned to active participation in a program other than WEP as part of an approved WEP employability plan. Necessary employability and support services including incentive and transportation payments not provided under the assigned program shall be provided under WEP.

46. Unsubsidized Employment: Work in a job for which the wages and benefits are not subject to a direct federal subsidy for the individual.

47. Volunteer: An AFDC, GA, or Food Stamp applicant or recipient who, though exempt from WEP registration, volunteers for and registers for WEP.

48. Wage Component: An activity such as Public Service Employment (PSE), OJT and CWP, whereby a participant performs work for specified hours, and is paid wages and benefits.

49. Welfare Benefits: Those payments or services other than those provided in this rule that are available to applicants and recipients of AFDC, GA, or Food Stamps.

50. Welfare Appeals Referee: The hearing officer designated by the welfare agency to hear and decide or make recommendations on issues relating to exemption or non-exemption for WEP registration or any program-related AFDC, GA or Food Stamp benefit reductions, suspensions or terminations which result from deregistration from WEP.

51. WEP Center: A field office of a Prime Sponsor from which WEP services are administered.

52. WEP Center Staff: Prime Sponsor staff in a WEP Center, or satellite office thereof, part or all of whose time is compensated by WEP funds and staff from other agencies assigned to work in a WEP Center and performing WEP functions.

53. WIN: The Work Incentive Program for AFDC applicants and recipients, authorized by Title IV-C of the Social Security Act.

54. WIN Registrant: An AFDC applicant or recipient who has registered with the Work Incentive Program.

D. Participation of AFDC and GA Applicants and Recipients

1. All AFDC and GA applicants and recipients eligible for WEP shall be informed of its availability and shall register for WEP unless exempt or otherwise excluded from registration by the Commissioner of Public Welfare.

2. The following AFDC and GA applicants and recipients shall be exempt from WEP registration:

a. children under 16;

b. children age 16 through 18, and attending school full time;

c. persons who are ill;

d. persons who are incapacitated (AFDC recipients whose WEP exemption is based on incapacity shall be referred to the Division of Vocational Rehabilitation in the Department of Economic Security):

e. persons over age 65;

f. persons who live so far away from their WEP Center or placement that more than 2 hours per day (by reasonably available public or private transportation) would be required to travel to and from work or training (exclusive of time necessary for transporting children to or from child care), unless such commuting time is normal to the community;

g. persons whose presence in the home is needed because of the illness or incapacity of another person in the household;

h. AFDC caretaker of a child under age 6 or GA caretaker of a child under age 18 (only one such exemption is allowed per household);

i. the spouse of a WEP or WIN registrant;

j. persons receiving General Assistance who are working at least 30 hours per week, at a wage consistent with that paid in the community for similar work;

k. persons who are registered in WIN and are in a suitable employability development plan;

l. persons receiving General Assistance who have been referred to or applied for work training, work experience, or a similar program, if approved by the local agency and if the waiting period for acceptance into the program does not exceed 30 days.

3. All GA and AFDC recipients who are mandated to or volunteer to register with WEP shall be referred for registration to the local WEP office by the local welfare agency which shall ensure that transportation to and from such registration is available.

4. AFDC and GA recipients exempt from WEP registration may voluntarily register with WEP, unless the Commissioner of Public Welfare limits participation of volunteers. WEP may exclude from participation individual volunteers whose barriers to employment preclude them from obtaining gainful employment during the existence of WEP.

5. Treatment of Income for AFDC and GA WEP Participants.

a. WEP incentive payments of not more than $30 per week shall be disregarded in determining the grant amount for WEP participants.

b. Reimbursement for actual cost of training-related expenses shall be disregarded as income for WEP participants.

c. Wages paid in Work Equity community work projects shall be considered as earned income.

d. All other income shall be handled in accordance with DPW 44 and DPW 55.

e. Receipt of earned income by WEP participants shall not cause ineligibility for public assistance benefits (including Title XX services, Food Stamps and MA or GAMC), even though the household would be otherwise ineligible for a public assistance grant payment, until income from unsubsidized employment meets the need as computed in the existing applicable manner.

E. Participation of Food Stamp Recipients

1. Eligibility for the Food Stamp Program shall be determined by the local welfare agency according to applicable federal law. All Food Stamp applicants or recipients eligible for WEP shall be informed of the program's availability.

2. An individual receiving Food Stamps who is required to register with the Job Service in the Department of Economic Security shall be referred to WEP on a timely basis after 30 days of Job Service registration, unless WEP-exempt. An individual shall be considered WEP-exempt if he/she:

a. has gained employment of at least 30 hours per week; or

b. has been referred to and accepted in a work and training program sponsored by a public agency; or

c. has a job attachment as defined in E. 8. below.
WIN-exempt status shall be reviewed monthly thereafter by the Job Service and individuals who become non-exempt shall be referred to WEP on a timely basis.

3. Individuals referred to WEP shall be required to register with WEP and shall also:

a. Report to the local WEP office where he/she is registered, for an appraisal interview, upon reasonable request;

b. Supply additional information regarding employment status or availability for work, if requested;

c. Interview for, accept bona fide offers of, and/or continue in suitable work to which he/she is referred by the local WEP office.

4. Food Stamp recipients exempt from WEP registration may voluntarily register with WEP, unless excluded from registration by the Commissioner of Public Welfare, and shall be referred to the local WEP office by the local Job Service office.

5. Food Stamp recipients exempt from the Job Service registration may voluntarily register with WEP, unless excluded from registration by the Commissioner of Public Welfare, and shall be referred directly to the local WEP office by the local welfare agency.

6. Food Stamp recipients exempt from WEP registration may voluntarily register with WEP, unless the Commissioner of Public Welfare limits participation of volunteers. WEP may exclude from participation individual volunteers whose barriers to employment preclude them from obtaining gainful employment during the existence of WEP.

7. A person who becomes ineligible for Food Stamps because of excess income attributable to his/her mandatory participation in WEP may continue in WEP until placed in permanent unsubsidized employment.

8. An individual with a job attachment shall be defined for purposes of this section as one who is on strike; lock-out; seasonal layoff; temporary layoff; has a bona fide job prospect with a definite starting date not to be later than 45 days from the date of registration with the Job Service; or is a member in good standing of a union which provides to its members free placement service and exposure to full employment.

F. Exemption Determination Disputes

1. The referring agency shall inform all applicants and recipients of AFDC, GA, and Food Stamps of their rights to contest determination of WEP non-exempt status in accordance with the provisions of this Rule. If a dispute arises between an individual and the referring agency regarding a determination of non-exempt status, the referring agency determination is binding on the individual. If, however, the individual requests a hearing on the issue, as provided in this Rule, he/she shall be considered exempt until his/her status is determined.

2. If an individual contests a determination of non-exemption on the basis of incapacity or illness, the allowable period for receipt of medical verification of such status will be thirty (30) days from the date that the client is notified of the determination. If the individual is a WEP participant, and medical verification or other information is necessary and cannot be obtained within 30 days, the local welfare agency must notify WEP prior to the end of the initial 30-day period of any arrangements that have been made to obtain such information. An acceptable response can also be notification that the determination will be delayed, in which case WEP should not deregister the individual until and unless the referring office's determination necessitates deregistration.

3. If, after referral, WEP Center Staff believe an individual referred as "mandatory" should be exempt, WEP should register the individual and then state the reasons in writing to the referring office and request a review of the case.

The referring office should inform WEP in writing of its findings within 30 days of the request. The decision of the referring office is then binding on WEP.

If WEP receives no response from the referring office within 30 days of its request, it should contact the referring office to determine what action has been taken.

If no action has been taken, the individual should be deregistered as exempt at the end of the 30-day period. However, if an individual is deregistered and the referring office later determines that he/she is non-exempt, he/she shall be re-registered in order to ensure eligibility for welfare benefits.

G. Registration Procedures

WEP Center staff shall register all individuals referred by the respective IMU, Job Service or WIN offices within 3 working days of the day the individual appears for registration. Registration is not complete until all registration requirements are met. WEP Center staff shall:

1. Inform all participants about the WEP program and requirements;

2. Work History: Obtain from each applicant a complete work history, complete the WEP registration forms and provide each participant with written proof of registration;

3. Job Market Information: Provide all participants, at the time of registration, with job market information and referral to available employment. All appropriate job market information available to WEP, including the Job Service Job Bank, shall be used to provide this information and facilitate such referrals;

4. Registration: Notify the referring office, within 3 working days of registration, that registration has been completed.

H. Appraisal and Certification

1. Appraisal Sequence: All participants shall be appraised in the order in which they are registered. Notwithstanding the above, all AFDC-Unemployed Fathers must be appraised within 2 weeks of registration with WEP, and must be certified no later than 30 days after registration. All appraisals shall be completed prior to certification. Certification shall be completed within 30 days of registration.

2. Appraisal Interview: The appraisal interview shall be conducted by WEP Center staff, including support service staff, and is intended to assess the registrant's employability potential and need for supportive services. Whenever possible, individuals shall be appraised at the time of registration. An employability plan for each participant shall be initiated at the appraisal interview.

3. Employability Plan: The employability plan shall contain an employment and training services section and a support services section, and shall be designed to lead to a definite unsubsidized job goal attainable in the shortest time period consistent with the participant's skills, and needs, knowledge,

ability, support services needs, project resources, and job market opportunities. The employability plan shall be developed jointly by the participant and WEP staff including support service staff. Final approval of the employability plan rests with WEP staff.

4. Certification: Support service staff shall certify in writing that the necessary immediate and on-going support services have been provided or arranged, or that no such services are required for those individuals who have been selected for participation in WEP. Certification shall be completed within 30 days of registration. At any point during participation certification may be made for additional services.

5. Support Services: An uncertified participant may be provided pre-appraisal and appraisal services by the WEP support service staff. The participant must be certified before receiving WEP support services, listed in section "O" of this Rule. A WEP participant may be certified at any time during the registration period and additional certifications may be done, if necessary. After certification, a participant who is not employed may receive certified support services until successful completion of his/her EP. Upon entering employment (either unsubsidized or subsidized), WEP support services may be provided for up to 30 days after entering employment. These services may continue for a maximum of 90 days at the discretion of the support service staff. In an emergency such services may be provided for an additional 30 days beyond the 90 day maximum.

6. Benefits and Job Referral: Welfare benefits shall not be denied by reason of the individual's referral to a job, to WEP, or solely by reason of an individual's participation therein.

I. Appropriate Employment and Training Criteria

1. Standards for Employment and Training Assignments: Except as otherwise provided in this Rule, WEP participants shall accept assignment to employment or other WEP activity as determined appropriate by WEP Center staff or shall be subject to deregistration. The following standards must be met before participants shall be required to accept employment or training assignments, including OJT, PSE, classroom training and Community Work Projects:

a. Employability Plan: An employment or training assignment must be within the scope of an individual's employability plan. This plan may be modified jointly by the participant and WEP staff including support service staff. Approval of the employability plan rests with WEP Center staff. If the participant disagrees with the decision, she/he may initiate a grievance;

b. Performance Capability: The job or training assignment must be related to the capability of the individual to perform the task on a regular basis. Any claim of adverse effect on physical or mental health shall be verified by a physician or a licensed or certified psychologist, and shall attest to the individual's ability or inability to accept employment or participation in other WEP activity. Pending verification the participant shall be assigned to the EDP component as defined in M. 1. below.

c. Commuting Distance: The total daily commuting time from home to the assigned work or training site and return shall not normally exceed 2 hours, not

including time required to transport a child/children to and from a child care facility. If a longer commuting distance and time is normal to the community, the round trip commuting time shall not exceed the norm for that community;

d. Child Care Standards: Required child care shall meet the standards specified by the Department of Public Welfare and shall be available during the hours the individual is engaged in a WEP assignment plus any additional necessary commuting time;

e. Health and Safety Standards: The employment or training site to which the individual is assigned shall not be in violation of applicable federal, State and local health and safety laws, regulations and standards.

f. Non-Discrimination: No assignments shall be made which discriminate in terms of age, disability, sex, race, creed, color, national origin, or public assistance status. Employment and training assignments shall in no way contribute to discriminatory hiring practices;

g. Employability and Support Services: No individual shall be referred to employment or training unless employability and support services necessary for participation are available. The cessation or withdrawal of such necessary services while the individual is participating in an assignment shall constitute good cause for refusal to participate.

2. Other Employment Criteria: In addition to criteria in paragraph 1 of this section, appropriate employment criteria shall include the following:

a. Appropriate Employment: Appropriate employment may be temporary, permanent, full-time, part-time or seasonal, if such employment meets the other employment standards of this section;

b. Prevailing Wages: All participants in WEP employment components shall receive a wage which shall meet or exceed the statutory federal or State minimum wage, whichever is higher, and which is not less favorable than the wage normally paid for similar work by the employing agency or service.

c. Hours of Work: The daily and weekly hours of work shall not exceed those customary to the occupation; and

d. Exemption From Employment: No individual shall be required to accept employment if:

(1) The position offered is vacant due to a strike, lock-out, or other bona fide labor dispute;

(2) The individual would be required to work for an employer contrary to the conditions of his/her existing membership in the union governing that occupation. However, employment not governed by the rules of a union in which she/he has membership may be deemed appropriate.

(3) The job offered would interrupt a program in progress under an approved WEP employability plan, or would impede return to his/her regular job. This does not, however, preclude temporary employment during the interval prior to an individual's return to his/her regular job.

(4) The individual would be required to join a union, or refrain from joining a bona fide labor union as a condition of being employed, unless union membership is a requirement of a collective bargaining agreement.

3. Other Training Criteria: In addition to criteria in paragraph 1 of this section, appropriate training criteria shall include the following:

a. The quality of the training must meet local employers' requirements so that individuals will be in a competitive position within the local labor market;

b. The training shall also be likely to lead to employment which will meet the appropriate employment criteria.

J. General Benefits for Program Participants

1. Worker's Compensation: Each participant in an on-the-job training or Community Work Project program under WEP shall be assured of worker's compensation at the same level and to the same extent as other employees of the employer who are similarly employed or engaged and are covered by a State or industry worker's compensation statute. Whether provided through the State's compensation agency or a private insurance carrier, this coverage includes medical and accident insurance as well as income maintenance insurance.

2. Insurance: Where a participant is employed or engaged in a Community Work Project, on-the-job training, or classroom training, where others similarly employed or engaged are not covered by an applicable worker's compensation statute, the participant shall be provided with medical and accident insurance coverage. Whether provided through the State's worker's compensation agency or a private insurance carrier, WEP shall provide such participants with medical and accident insurance coverage comparable to the medical and accident insurance provided under the applicable State worker's compensation statute. However, WEP shall not be required to provide these participants with the income maintenance insurance coverage in the statute.

3. Other Fringe Benefits: Each participant in an On-the-Job Training or Community Work Project program shall also be assured of health insurance, unemployment insurance (to the extent such benefits are allowable), coverage under collective bargaining agreements and other benefits at the same levels and to the same extent as other employees similarly employed and to working conditions neither more nor less favorable than such other employees similarly employed. Nothing in this section shall be interpreted to require coverage for health insurance, unemployment insurance and similar benefits for participants, such as Community Work Project participants, where there is no employee of the employer performing the same or similar work in the employment situation. In determining whether the work is the same or similar to that of a person regularly employed, the WEP Center staff will take into consideration, but shall not be limited to, employment status, type of work performed, job classification and method of appointment to the position.

K. Allowances and Incentives for WEP Participants

1. Incentive Payments: Individuals shall receive incentive payments at a rate of $6 per day (maximum of $30 per week) for each day in which they participate

in a non-wage WEP component. No incentive pay shall be authorized for participation in the intake functions of registration, orientation, appraisal and initial employability planning, or while assigned exclusively to support services.

2. Transportation Expenses:

a. Will be paid to individuals for actual costs they incur because of their participation in non-salaried components such as classroom training, Intensive Manpower Service, or Employability Development Planning. Expenses are based on actual costs of public transportation or car pool payments, or 13¢ per mile for actual number of miles driven, not to exceed 100 miles per day (unless the participant can establish higher transportation costs that are both necessary and reasonable).

b. Shall also be authorized for individuals placed in employment, OJT, PSE, or CWP. Payments for transportation expenses shall be continued for no more than 4 weeks or until these individuals receive their first full paychecks, or grant adjustments reflecting new work-related expenses, whichever occurs first.

3. WEP Center staff will determine the amount of subsistence allowances, in addition to incentive and transportation payments, to be paid to individuals for separate maintenance when they are in training facilities beyond normal daily commuting distance from their homes. These allowances shall be paid for each calendar day within the training period, including holidays and weekends, during which individuals are participating in such training, and are residing away from home.

4. Transportation expenses in amounts equivalent to two one-way trips shall be paid to individuals enrolled at training facilities located beyond normal commuting distance. These payments are to cover the initial trip to the training facility and for the final trip home at the completion or other termination of such training. The rate of reimbursement shall be based on actual costs of public transportation or car pool payments, or 13¢ per mile for actual number of miles driven.

5. WEP Center staff will determine and authorize allowances for non-recurring expenses which are required for employment or training include, but are not limited to, payments for auto repairs, auto insurance, special clothing, tools and equipment.

6. Petty Cash: WEP Center may establish petty cash funds to meet participant's small cash needs incidental to training, transportation, or referral to employment which cannot be met by other procedures.

L. Relocation Assistance

WEP may assist a certified individual to relocate his/her place of residence when WEP staff determines such relocation is necessary in order to enable him/her to become permanently employed and self-supporting. Such assistance shall be given only to an individual who concurs with the relocation and who has a bona fide job offer at the place of relocation at a wage rate which meets full need, as determined by the state in which the individual relocates. Assistance under

this section shall not exceed the reasonable costs of transportation for the individual, dependents, and household belongings, plus such relocation allowance as WEP determines reasonable.

M. The WEP Components

1. Employability Development Planning (EDP): The EDP component may include:

a. Orientation to services available in WEP or through referral to other resources;

b. In-depth assessments of those individuals who have problems which must be resolved before they can participate in other WEP components or activities;

c. Special WEP support services, such as help with money management, marital or emotional problems, for individuals who need such services in order to participate in WEP;

d. Those services arranged or provided for by the support service staff for those individuals whose barriers to employment are great and cannot be removed by normal WEP services.

2. Intensive Manpower Services (IMS): The Intensive Manpower Services component provides employment services, which shall include vocational counseling, job development, exposure to labor market information, job placement, job-seeking skills training, and job finding clubs to assist the individual to obtain unsubsidized employment.

If unsubsidized employment is not available, the IMS component shall be used to develop opportunities for individuals in community work projects, on-the-job training, and CETA public service employment. Subsidized employment is intended to provide an individual a work-related experience until such time as she/he can be placed in an unsubsidized position.

3. Classroom Training (CT): Classroom training includes vocational or other institutional training, as well as basic or remedial education, conducted by a qualified instructor at a non-work site.

4. On-the-Job Training (OJT):

a. OJT is an employment opportunity which includes training. Under this component, a certified participant is hired by a private or public employer, who provides training subsidized under contract with WEP. Employers provide increased supervision and training for which they will be reimbursed by WEP for the extraordinary costs of such training and supervision.

b. An OJT participant is considered to be employed, insofar as employment affects AFDC, GA, or FS benefit determinations. However, an OJT participant shall remain an active participant, and shall not be deregistered from WEP.

5. Transfer: Certified individuals referred to and accepted by other eligible federal or state-funded employment or training programs, and who meet all eligibility requirements under those programs, shall be temporarily suspended

from WEP. Such individuals shall normally be compensated in accordance with and through the provisions of those programs. However, when such compensation is not available or would be disadvantageous to the individual, the participant may choose to accept WEP benefits instead. Notwithstanding such transfer, support and job services which are not provided under the alternative program, but which are necessary to permit the individual to continue in the program, will be provided or arranged for by the support service staff.

6. Community Work Projects (CWP's): CWP's provide participants with subsidized employment until they are able to move into other components or activities or into unsubsidized employment. CWP slots will be developed to meet the individual needs of the participants and shall meet the definition of appropriate work.

CWP's shall not result in the displacement of currently employed workers, including partial displacement such as a reduction in hours, work, wages, or employment benefits. In addition, CWP's shall be used to support positions for public service needs which have not been met, or to provide new public services in a unit of State or local government, a public agency or institution, or a private nonprofit organization.

When developing a CWP position, the WEP staff must determine if there is a collective bargaining agreement between the employer and the employees, or their representatives. Where an agreement exists and is applicable to the establishment and the occupation, the CWP contract must not conflict with the agreement. A statement to this effect, signed by the employer will be made a part of or affixed to the WEP/CWP contract.

7. Public Service Employment (PSE): CETA PSE Title VI positions shall, to the extent possible, be available to WEP participants. Slots shall not be set aside for WEP participants by position or job; the Prime Sponsor shall accept referral of WEP participants for Title VI vacancies. When participants are transferred to CETA Title VI positions, efforts shall be made to place individuals in jobs where they will have an opportunity to retain those positions as unsubsidized employment.

N. Employee Status

A WEP participant shall not by virtue of registration in WEP be deemed an employee of any public agency, and shall not be subject to the provisions of laws relating to State or federal employees, including those relating to hours of work, rates of compensation, leave, unemployment compensation, and State or Federal employee benefits.

O. Support Services

1. Support services available to WEP registrants for the purpose of facilitating employability plans and self-support goals shall include:

a. Day Care Service (children): Personal care during the day (for less than 24 hours) in the child's own home or in a nurturing and protective setting to substitute for or supplement the child rearing provided by the child's parents or caretaker, as well as integral but subordinate medical service.

Child care shall be suitable for the individual child, and the caretaker shall be involved in the selection of the child care facility if more than one facility is available. If only one facility is available, the caretaker shall accept it, unless the caretaker can show that it is unsuitable for the child. Such child care arrangements shall be maintained until the caretaker is able to make other satisfactory arrangements. Child care arrangements must comply with standards as set forth in 45 CFR 228.42.

b. Family Planning: Services provided to enable individuals to voluntarily limit family size or plan time intervals between children. These are available to participants on a voluntary basis.

c. Counseling Services: Professional services to assist individuals and families in coping with and resolving any personal or relationship concerns.

d. Health Services (employment related): Arranging and facilitating access to and use of physical and mental health resources, to identify any physical or mental limitations which would restrict vocational options.

For GA and AFDC recipients, this medical examination is a Medical Assistance or General Assistance Medical Care expenditure and is not to be paid for under WEP.

e. Vocational Rehabilitation Services: Special employment assistance for individuals who are disabled for social, economic, or mental or physical health reasons (including such things as surgery, psychiatric treatment, prosthetic devices, speech or hearing therapy, visual services, dental care, etc.) to correct or modify a physical or mental condition which inhibits employment.

Vocational rehabilitation services may be provided with WEP funds only when not available through the Division of Vocational Rehabilitation in the Department of Economic Security, and when there is reasonable expectation that the services will lead to unsubsidized employment.

2. The following support services may be arranged for or provided when determined necessary by the WEP Central staff to successful completion of an employability plan:

a. Homemaking Service: Providing substitute care in the absence or disability of the caretaker, personal care for ill or disabled individuals, and instruction on effective home management, self-care and social skill methods.

b. Housing Services: Assisting individuals to obtain, maintain, and improve housing, and/or to modify existing housing.

c. Legal Services: Arranging for assistance in resolving noncriminal legal matters and the protection of legal rights.

d. Money Management Services: Arranging and providing assistance in developing effective budgets and managing indebtedness.

e. Transportation Services: Arranging and providing travel and escort to and from community resources and facilities.

P. WEP Adjudication System

1. General: All Work Equity participants shall have available to them an appropriate system for appealing agency actions within the Project. The particular system used will depend on the conditions under which the participants are registered in WEP; i.e., whether they are applicants for or recipients of AFDC, GA, or Food Stamps; and whether they are mandatory participants or volunteers.

2. Disputes Involving WEP Registrations: A welfare appeals referee shall conduct welfare hearings pursuant to the procedures prescribed in 45 CFR 205.10, 7 CFR 271.1, and Minn. Stat. §256.045 (1976), in cases where applicants or participants contest the registration or exemption requirements, or any program-related AFDC, GA, or FS grant reductions, suspensions, or terminations which result from deregistration from WEP. These procedures are available to all AFDC, GA, or FS participants who are required to register with WEP as a condition of eligibility.

3. Issues to be Decided Under the WEP Adjudication System: Grievances and sanctionable actions shall be resolved through the WEP adjudication system. Written records of all disputes shall be maintained by the WEP Center.

a. Grievances are written complaints which do not involve the threat of WEP sanctions. Such complaints may arise over questions of actions by the WEP Center staff or work site staff including:

(1) Wages or allowances;

(2) Hours of work or training;

(3) Work or training assignments;

(4) Disciplinary action; and/or,

(5) Any disputes involving volunteers.

While adjudication is pending, the welfare grant amounts will be determined in relation to earnings available to the recipient.

Grievances shall be initially handled informally by the WEP Center Supervisor. Within 5 working days of receipt of written notice from the participant the matter will be reviewed and a decision issued. An individual who is not satisfied with the disposition of the grievance may request a hearing at the WEP Center. This hearing will be conducted according to the WEP adjudication process described in 4 G et. seq. below.

b. Grievances involving discrimination on the basis of race, religion, color, national origin, sex, or age shall be handled according to Equal Opportunity provisions established at 29 CFR 31, and 45 CFR 80, and to the extent applicable, in compliance with Title VI of the Civil Rights Act of 1964 and the regulations issued thereunder. This section is not intended to abridge the rights of WEP participants to seek redress for unlawful discrimination through other available administrative and judicial processes.

c. Sanctionable actions are those for which a participant may be deregistered from WEP for failure or refusal to participate without good cause. All sanctionable issues, if appealed, shall be processed through the WEP adjudication system, described in this rule. They include:

(1) Failure or refusal without good cause to attend scheduled WEP appraisals or other interviews;

(2) Failure or refusal without good cause to accept appropriate child care as may be provided for the purpose of enabling the individual to participate in WEP;

(3) Failure or refusal without good cause to accept offers of, or referrals to appropriate employment or training;

(4) Quitting an appropriate job without good cause, or being fired from an appropriate job for cause;

(5) Failure or refusal without good cause to accept assignment to WEP components or to otherwise participate in WEP.

4. Initial Concilation Efforts and WEP Hearing: If the WEP staff believes that a mandatory WEP participant has committed a sanctionable action, it shall make every effort toward an informal conciliatory resolution of the underlying reasons. The conciliation period shall not exceed 30 days, and may be terminated earlier if it appears no resolution is possible. When all such efforts are exhausted, WEP may issue a Notice of Intended Deregistration.

a. When WEP determines that all informal, conciliatory measures have been exhausted, the Notice of Intended Deregistration shall be issued to the participant. The Notice shall state that the participant has failed or refused to participate in required WEP activities without good cause, and is subject to deregistration. The Notice shall also inform the individual of his/her right to a fair hearing if the individual believes the proposed action is unwarranted. The Notice shall be accompanied by the forms required to file for a hearing and the instructions necessary to complete and file the forms. If the individual desires a hearing he must request the same within 10 days of the date of mailing of the Notice;

b. Such hearing will be held by a hearing officer of the Department of Economic Security in the manner prescribed by Minn. Stat. §268.10, Subd. 3 (1976); and if an AFDC registrant is involved, also in accordance with 29 CFR §56.66 - 56.68.

The hearing officer may rule:

(1) That the individual has failed or refused to participate without good cause in WEP and that appropriate deregistration shall be initiated.

(2) That good cause has been shown for failure or refusal to participate and the individual should be retained in the program.

(3) That the request for a hearing is dismissed because:

(a) It was filed untimely without good cause;

(b) It has been withdrawn in writing;

(c) The individual failed to appear at the hearing without good cause; or

(d) Reasonable cause exists to believe that the request for a hearing has been abandoned or repeated requests for rescheduling are arbitrary and for the purpose of unduly delaying or avoiding a hearing.

(4) That the participant was appropriately or inappropriately assigned to a WEP activity by the WEP staff; or

(5) Render such other rulings as are appropriate to the issues in question.

DES shall mail copies of the hearing officer's decision to the participant, the WEP Center and WEP Central, the local welfare agency, the Department of Public Welfare and other interested parties to the hearing. Copies to the participant and his/her representative, if any, shall be accompanied by the forms required to file an appeal from an adverse decision, and the instructions necessary to complete the forms. Upon receipt of the decision, the local welfare agency shall notify the participant of the sanctions that may be imposed by the county, and the individual's right to appeal.

c. If any party disagrees with the decision of the hearing officer and desires a review of said decision, he must, within 10 days of the date of the decision, request a review of the decision. If the county agency or WEP requests review, notice must be given to the registrant at the same time as the request for review is filed. A request for review by any party shall not stay implementation of the hearings officer's decision.

5. Appeal Process for AFDC Registrants:

a. If the issues decided by the hearing officer involve an AFDC participant, the party who disagrees with the decision of the hearing officer may file the request for review with the Commissioner of Economic Security.

b. A hearing shall be held before the Commissioner of Economic Security or his duly-authorized representative, in the manner prescribed by Minn. Stat. §268.10, Subd. 5 (1976), and in accordance with 29 CFR §56.64. The Department of Economic Security shall mail to all interested parties a notice of the filing of and a copy of the findings and the decisions of the Commissioner or his representative.

c. Any party may file an appeal from the decision of the Commissioner of Economic Security in either of two ways:

(1) With the National Review Panel of the U.S. Department of Labor, in accordance with the provisions of 29 CFR §56.70-75 and 45 CFR §224.70-75; or,

(2) With the Minnesota Supreme Court pursuant to Minn. Stat. §256.736, Subd. 4(4) (amended, 1977) and Minn. Stat. §268.10, Subd. 8 (1976).

6. Appeal Process for GA and Food Stamp Participants:

a. If the issues decided by the hearing officer involve a GA or Food Stamp participant, the party who disagrees with the decision of the hearing officer shall

file the request for review with the Department of Public Welfare. Such a hearing shall be held in the manner prescribed by Minn. Stat. §256.045, Subd. 2 or Subd. 3 (1976).

b. Subsequent appeals may be made pursuant to Minn. Stat. §256.045, 3 et. seq. (1976).

7. Post-determination Actions, Counseling: WEP benefits shall cease, protective or vendor payments shall be initiated, and a 60-day counseling period by WEP support service staff shall begin the fifth business day following:

a. The expiration of the prescribed time period for filing a request for a hearing and proposed deregistration from WEP, or the date on which the request for such hearing is withdrawn; or

b. The date of the DES hearing officer's decision that the registrant has failed or refused to participate in WEP without good cause; or

c. A decision by the appellate body, referred to in P. 5. or 6. supra, which reverses a decision favorable to a WEP registrant. Counseling shall be provided by support service staff for a period of up to 60 days, unless:

(1) The individual is not a certified WEP participant, or

(2) The individual has already received such a counseling period during the current registration, and is therefore not eligible for further counseling and is to be deregistered.

The purpose of the counseling period is to encourage the individual to participate in WEP. Upon completion of the 60-day counseling period, if the WEP support service staff determines that the individual has continued to refuse to participate without good cause, she/he will be deregistered and sanctions shall be initiated. Counseling may be terminated at any time during the 60-day period, when the WEP support services staff determines that counseling efforts are unsuccessful and the individual will not participate in WEP. The WEP support service staff shall notify WEP that 60-day counseling is unsuccessful, and WEP shall deregister the individual for failure or refusal to participate without good cause.

8. Post-Determination Actions: Sanctions

a. A voluntary participant shall not have his/her welfare benefits terminated, reduced, or suspended because of failure or refusal to participate in WEP. However, all WEP benefits shall be terminated when the individual is deregistered for failure to participate. The volunteer may subsequently participate in WEP according to the provisions of section P. 9.

b. The following sanctions apply to a mandatory WEP participant who has been deregistered:

(1) If the individual is the only dependent child in an AFDC family, assistance for the entire family is terminated;

(2) Any other individual shall have his/her portion of the GA or AFDC grant deleted. Assistance to the other family members will be provided through protective or vendor payments;

(3) Food Stamp benefits shall be terminated in accordance with procedures outlined in the Food Stamp Act.

9. Post-Determination Actions: Readmittance to WEP: If, during the 60-day counseling period, the WEP support service staff determines that a participant is progressing satisfactorily, she/he shall be reassigned to an active WEP component. If the 60-day counseling period is unsuccessful, as determined by the WEP support service staff, and an individual is deregistered from WEP for failure to participate without good cause, she/he must remain deregistered from WEP for 90 consecutive calendar days from the date the welfare grant was reduced or terminated. The individual must give evidence of willingness to participate before he/she may again register for WEP. The person's verbal agreement to cooperate is sufficient evidence of "willingness to participate". If an individual has failed to participate in WEP without good cause two or more times, she/he must remain deregistered for six months from the date the welfare grant was adjusted. WEP need not register any recipient whose prior failure to participate was the result of criminal or other activities which presented a hazard to WEP staff or to other WEP participants.

Q. Deregistration

1. All deregistrations shall be performed by WEP.

2. Deregistration is necessary when:

a. An individual is found to have failed or refused to participate in WEP without good cause;

b. An incorrect determination of non-exemption has been made;

c. An individual becomes exempt, and the local welfare agency informs WEP Center that she/he does not wish to volunteer;

d. An individual becomes ineligible for welfare benefits, except where she/he is participating in a WEP component or is employed and receiving WEP-funded support services.

3. The local welfare agency shall notify the WEP Center of any change which will affect a welfare recipients welfare or exemption status in such a way as to warrant deregistration.

4. Volunteers who withdraw from WEP shall be deregistered without penalty.

5. Volunteers who are found to have refused to participate after receiving a Notice of Intended Deregistration, or who have requested a hearing on the matter and have received an adverse decision, shall be deregistered as exempt.

6. Persons who volunteer but for whom no suitable employment or training is available shall be deregistered as exempt.

R. Severability

The provisions of this rule shall be severable and if any phrase, clause, sentence or provision is declared illegal or of no effect, the validity of the remainder of this rule and the applicability thereof to any person or circumstances shall not be affected thereby.